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**HOUSE BILL NO. 608**

Offered January 20, 2000

*A BILL to amend and reenact §§ 2.1-1.5, 9-385, and 32.1-360 of the Code of Virginia and to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 54, consisting of sections numbered 2.1-820 through 2.1-837, relating to the sale and securitization of tobacco settlement assets.*

Patrons—Callahan, Albo, Black, McClure, McQuigg, Rollison and Rust

Referred to Committee on Finance

**Findings.**

The General Assembly hereby finds and declares as follows:

1. The major United States tobacco manufacturers and 46 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 that should result in the Commonwealth's receiving substantial sums of money in perpetuity. Virginia has reached State-Specific Finality, the Master Settlement Agreement has become effective in accordance with its terms, and Virginia has received its allocation of the first tobacco settlement payments made under the Master Settlement Agreement.

2. At its 1999 Regular Session, the General Assembly enacted Chapter 962, 1999 Acts of Assembly, to appropriate for the fiscal year ending June 30, 2000 sixty percent of Virginia's allocation under the Master Settlement Agreement, while leaving forty percent of such allocation unappropriated. The General Assembly at its 2000 Regular Session has appropriated the remaining forty percent of Virginia's allocation for its fiscal year ending June 30, 2000.

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

4. 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 accelerate the realization of the tobacco settlement payments receivable under the Master Settlement Agreement 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 several jurisdictions have sold their allocations of payments under the Master Settlement Agreement and applied the sale proceeds toward such needs.

5. 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 a portion of the tobacco settlement payments allocable to the Commonwealth under the Master Settlement Agreement, to enable the General Assembly to accelerate the funding of priority capital projects for which the sale proceeds are appropriated.

6. The General Assembly finds and determines that the optimum method for Virginia to accelerate the realization of its tobacco settlement payments receivable under the Master Settlement Agreement 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.

7. 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 a portion of its tobacco assets is compatible with the preceding paragraphs; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.1-1.5, 9-385, and 32.1-360 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 54 consisting of sections numbered 2.1-820 through 2.1-837, as follows:**

§ 2.1-1.5. (For effective date - See note) Entities not subject to standard nomenclature.

The following entities are not subject to the provisions of § 2.1-1.2 due to the unique characteristics or the enabling legislation of the entities:

Authorities

INTRODUCED

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- 60 Assistive Technology Loan Fund Authority.
- 61 Medical College of Virginia Hospitals Authority.
- 62 Richmond Eye and Ear Hospital Authority.
- 63 Small Business Financing Authority.
- 64 Virginia Agriculture Development Authority.
- 65 Virginia College Building Authority.
- 66 Virginia Economic Development Partnership.
- 67 Virginia Housing Development Authority.
- 68 Virginia Information Providers Network Authority.
- 69 Virginia Innovative Technology Authority.
- 70 Virginia Port Authority.
- 71 Virginia Public Building Authority.
- 72 Virginia Public School Authority.
- 73 Virginia Resources Authority.
- 74 Boards
- 75 *Board, Tobacco Settlement Financing Corporation.*
- 76 Board of Commissioners, Virginia Agriculture Development Authority.
- 77 Board of Commissioners, Virginia Port Authority.
- 78 Board of Directors, Assistive Technology Loan Fund Authority.
- 79 Board of Directors, Medical College of Virginia Hospitals Authority.
- 80 Board of Directors, Richmond Eye and Ear Hospital Authority.
- 81 Board of Directors, Small Business Financing Authority.
- 82 Board of Directors, Virginia Economic Development Partnership.
- 83 Board of Directors, Virginia Innovative Technology Authority.
- 84 Board of Directors, Virginia Resources Authority.
- 85 Board of Regents, Gunston Hall Plantation.
- 86 Board of Regents, James Monroe Memorial Law Office and Library.
- 87 Board of Trustees, Family and Children's Trust Fund.
- 88 Board of Trustees, Frontier Culture Museum of Virginia.
- 89 Board of Trustees, Jamestown-Yorktown Foundation.
- 90 Board of Trustees, Miller School of Albemarle.
- 91 Board of Trustees, Rural Virginia Development Foundation.
- 92 Board of Trustees, The Science Museum of Virginia.
- 93 Board of Trustees, Virginia Museum of Fine Arts.
- 94 Board of Trustees, Virginia Museum of Natural History.
- 95 Board of Trustees, Virginia Outdoor Foundation.
- 96 Board of Visitors, Christopher Newport University.
- 97 Board of Visitors, George Mason University.
- 98 Board of Visitors, Gunston Hall Plantation.
- 99 Board of Visitors, James Madison University.
- 100 Board of Visitors, Longwood College.
- 101 Board of Visitors, Mary Washington College.
- 102 Board of Visitors, Norfolk State University.
- 103 Board of Visitors, Old Dominion University.
- 104 Board of Visitors, Radford University.
- 105 Board of Visitors, The College of William and Mary in Virginia.
- 106 Board of Visitors to Mount Vernon.
- 107 Board of Visitors, University of Virginia.
- 108 Board of Visitors, Virginia Commonwealth University.
- 109 Board of Visitors, Virginia Military Institute.
- 110 Board of Visitors, Virginia Polytechnic Institute and State University.
- 111 Board of Visitors, Virginia State University.
- 112 Commonwealth Health Research Board.
- 113 Governing Board, Virginia College Building Authority.
- 114 Governing Board, Virginia Public School Authority.
- 115 Library Board, The Library of Virginia.
- 116 Motor Vehicle Dealer Board.
- 117 State Board for Community Colleges, Virginia Community College System.
- 118 Virginia-Israel Advisory Board.
- 119 (Effective until July 1, 2002) Wireless E-911 Service Board.
- 120 Commissions
- 121 Advisory Commission on the Virginia Schools for the Deaf and the Blind.

- 122 Alexandria Historical Restoration and Preservation Commission.
- 123 Charitable Gaming Commission.
- 124 Chesapeake Bay Bridge and Tunnel Commission.
- 125 Hampton Roads Sanitation District Commission.
- 126 Tobacco Indemnification and Community Revitalization Commission.
- 127 *Corporations*
- 128 *Tobacco Settlement Financing Corporation.*
- 129 *Districts*
- 130 Chesapeake Bay Bridge and Tunnel District.
- 131 Hampton Roads Sanitation District.
- 132 *Educational Institutions*
- 133 Christopher Newport University.
- 134 Frontier Culture Museum of Virginia.
- 135 George Mason University.
- 136 James Madison University.
- 137 Jamestown-Yorktown Foundation.
- 138 Longwood College.
- 139 Mary Washington College.
- 140 Miller School of Albemarle.
- 141 Norfolk State University.
- 142 Old Dominion University.
- 143 Radford University.
- 144 The College of William and Mary in Virginia.
- 145 The Library of Virginia.
- 146 The Science Museum of Virginia.
- 147 University of Virginia.
- 148 Virginia Commonwealth University.
- 149 Virginia Community College System.
- 150 Virginia Military Institute.
- 151 Virginia Museum of Fine Arts.
- 152 Virginia Polytechnic Institute and State University.
- 153 Virginia State University.
- 154 *Foundations*
- 155 Chippokes Plantation Farm Foundation.
- 156 Rural Virginia Development Foundation.
- 157 Virginia Arts Foundation.
- 158 Virginia Land Conservation Foundation.
- 159 Virginia Historic Preservation Foundation.
- 160 Virginia Outdoor Foundation.
- 161 Virginia Tobacco Settlement Foundation.
- 162 *Museum*
- 163 Virginia Museum of Natural History.
- 164 *Partnership*
- 165 A. L. Philpott Manufacturing Extension Partnership.
- 166 *Plantation*
- 167 Gunston Hall Plantation.
- 168 § 2.1-1.5. (Delayed effective date - See notes) Entities not subject to standard nomenclature.
- 169 The following entities are not subject to the provisions of § 2.1-1.2 due to the unique characteristics
- 170 or the enabling legislation of the entities:
- 171 *Authorities*
- 172 Assistive Technology Loan Fund Authority.
- 173 Medical College of Virginia Hospitals Authority.
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- 179 Virginia Housing Development Authority.
- 180 Virginia Information Providers Network Authority.
- 181 Virginia Innovative Technology Authority.
- 182 Virginia Port Authority.

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184 Virginia Public School Authority.  
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186 Boards  
187 *Board, Tobacco Settlement Financing Corporation.*  
188 Board of Commissioners, Virginia Agriculture Development Authority.  
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190 Board of Directors, Assistive Technology Loan Fund Authority.  
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192 Board of Directors, Richmond Eye and Ear Hospital Authority.  
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194 Board of Directors, Virginia Economic Development Partnership.  
195 Board of Directors, Virginia Innovative Technology Authority.  
196 Board of Directors, Virginia Resources Authority.  
197 Board of Regents, Gunston Hall Plantation.  
198 Board of Regents, James Monroe Memorial Law Office and Library.  
199 Board of Trustees, Family and Children's Trust Fund.  
200 Board of Trustees, Frontier Culture Museum of Virginia.  
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207 Board of Trustees, Virginia Outdoor Foundation.  
208 Board of Visitors, Christopher Newport University.  
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213 Board of Visitors, Longwood College.  
214 Board of Visitors, Mary Washington College.  
215 Board of Visitors to Mount Vernon.  
216 Board of Visitors, Norfolk State University.  
217 Board of Visitors, Old Dominion University.  
218 Board of Visitors, Radford University.  
219 Board of Visitors, University of Virginia.  
220 Board of Visitors, Virginia Commonwealth University.  
221 Board of Visitors, Virginia Military Institute.  
222 Board of Visitors, Virginia Polytechnic Institute and State University.  
223 Board of Visitors, Virginia State University.  
224 Commonwealth Health Research Board.  
225 Governing Board, Virginia College Building Authority.  
226 Governing Board, Virginia Public School Authority.  
227 Library Board, The Library of Virginia.  
228 Motor Vehicle Dealer Board.  
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238 *Tobacco Indemnification and Community Revitalization Commission.*  
239 Corporations  
240 *Tobacco Settlement Financing Corporation.*  
241 Districts  
242 Chesapeake Bay Bridge and Tunnel District.  
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244 Educational Institutions

Christopher Newport University.  
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 Virginia Conservation and Recreation Foundation.  
 Virginia Outdoor Foundation.  
*Virginia Tobacco Settlement Foundation.*  
 Museum  
 Virginia Museum of Natural History.  
 Partnership  
 A. L. Philpott Manufacturing Extension Partnership.  
 Plantation  
 Gunston Hall Plantation.

#### Chapter 54.

#### *Sale and Securitization of Tobacco Settlement Payments.*

##### *§ 2.1-820. Definitions.*

##### *As used in this chapter:*

1. *"Agreement" shall mean the agreement or agreements referred to in this chapter between the Commonwealth, as seller of the Tobacco Assets, and the Corporation, as purchaser of the Tobacco Assets. Each sale by the Commonwealth of the Tobacco Assets pursuant to any such Agreement shall be a true sale and not a borrowing.*
2. *"Ancillary Contracts" means contracts described in subsection A of § 2.1-832.*
3. *"Board" means the Board of the Corporation.*
4. *"Bonds" means Tobacco Bonds and refunding bonds, notes and other evidences of indebtedness, issued by the Corporation pursuant to this chapter.*
5. *"Closing Date" means the date of delivery of the first issue of Tobacco Bonds.*
6. *"Commonwealth Allocation" means all moneys payable to the Commonwealth pursuant to the MSA, without giving effect to any sale of any portion thereof.*
7. *"Corporation" means the Tobacco Settlement Financing Corporation created pursuant to this chapter.*
8. *"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.*
9. *"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.*
10. *"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.*
11. *"Indenture Trustee" means the trust company or bank at the time serving as trustee under the*

trust indenture referred to in § 2.1-831.

12. "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.

13. "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.

14. "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.

15. "Swap Contracts" or "Swaps" means contracts described in subsection B of § 2.1-832 hereof.

16. "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.

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

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

§ 2.1-821. Corporation created; Public Body Corporate.

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

§ 2.1-822. Board; membership; terms; compensation and expenses; chairman and vice-chairman; quorum; employees, agents, etc.

The Board of the Corporation shall exercise all powers, rights and duties conferred by this chapter or other provisions of law upon the Corporation. The Board shall consist of the State Treasurer, the State Comptroller, and five additional members from the public at large to be appointed by the Governor, subject to confirmation by the General Assembly. The members appointed by the Governor shall have a background and significant experience in financial management and investments. The members of the Board appointed by the Governor shall serve at the pleasure of the Governor for terms of four years each, or until their successors shall have been appointed and qualified, except that the initial terms of three of the members shall expire on June 30, 2001, 2002 and 2003, respectively, as designated by the Governor. Any appointment to fill a vacancy on the Board shall be made for the unexpired term of the member whose death, resignation, or removal created such vacancy. Members with less than six years of service on the Board may be appointed to an additional term. Members shall be reimbursed for travel and other actual expenses incurred in performing their official duties as members. Members of the Board appointed by the Governor shall be compensated at the rate provided in § 2.1-20.3 for each day or portion thereof in which the member is engaged in the business of the Corporation.

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

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

§ 2.1-823. Powers of Corporation enumerated.

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 § 2.1-825 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, receive, or to authorize the Indenture Trustee to receive, as the same shall become due, the Tobacco Settlement Payments;

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 chapter 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 chapter.

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. The provisions of this chapter shall govern the incurrence 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 § 2.1-467.

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.

§ 2.1-824. 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 books and accounts of the Corporation shall be subject to audit not less than annually by the Auditor of Public Accounts or 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 chapter 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 chapter.

F. 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.

§ 2.1-825. No bankruptcy.

Prior to the date which 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 Chapter 9 of the federal bankruptcy code or such corresponding chapter or sections as 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 Chapter 9 or any successor or corresponding chapter or sections 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.

§ 2.1-826. Exemption from Public Procurement Act.

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

§ 2.1-827. 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.

§ 2.1-828. Sale of Tobacco Assets.

To the extent set forth in the appropriation and other acts, and subject to the limitations and conditions set forth in this section, the Governor is authorized to sell, from time to time, portions 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 first Tobacco Assets sold (being up to and including forty percent of the Commonwealth Allocation from and after July 1, 2001, as approved by the 2000-2002 Appropriation Act) shall consist of the net proceeds (after Financing Costs) of the first issue of Tobacco Bonds and the beneficial interest in the Residual Trust.

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.

§ 2.1-829. 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.

§ 2.1-830. 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 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) Tobacco Settlement Payments, (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 chapter 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 § 2.1-831 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 chapter.

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.

§ 2.1-831. 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 chapter may be secured by a trust indenture by and between the Corporation and the Indenture Trustee, which may be any trust company or bank having the powers of a trust company, whether located within or without the Commonwealth. Such trust indenture or the resolution providing for the issuance of such Bonds may pledge or assign all or any part of the Income or other assets of the Corporation available for such purpose. Such trust indenture or resolution



providing for the issuance of such Bonds may provide for the creation and maintenance of such reserves as the Board shall determine to be proper and may 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. Such trust indenture or resolution may contain provisions respecting the custody, safeguarding and application of all moneys and securities and may contain 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. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which 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 such trust indenture or resolution may contain such other provisions as the Corporation may deem reasonable and proper for priorities and subordination among the Holders and other beneficiaries. Any reference in this chapter 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.

§ 2.1-832. Swaps and Ancillary Contracts.

A. The Corporation may enter into, amend or terminate, as it determines to be necessary or appropriate, any Ancillary Contracts (a) 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 (b) 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 which 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.

§ 2.1-833. No invalidity.

Any failure of the Corporation to comply with this chapter shall not invalidate or impair any Bond or Swap or Ancillary Contract. Bonds may contain a recital that they are issued pursuant to this chapter, which recital shall be conclusive evidence of their validity, the validity of the related agreements, and the regularity of the proceedings relating thereto.

§ 2.1-834. 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.

§ 2.1-835. Distributions subject to appropriation.

Amounts received by the Commonwealth, whether received as purchase price for the Tobacco Assets sold or with respect to the Commonwealth's beneficial interest in the Residual Trust, shall be subject to appropriation in accordance with the provisions of Article X, Section 7 of the Constitution of Virginia.

§ 2.1-836. Pledge and agreement.

552 *The Commonwealth pledges and agrees with the Corporation, and the Holders of the Bonds in which*  
553 *the Corporation has included such pledge and agreement, that the Commonwealth will (i) irrevocably*  
554 *direct the escrow agent under the MSA to transfer all Tobacco Settlement Payments directly to the*  
555 *Corporation or its assignee, (ii) enforce the Corporation's rights to receive the Tobacco Settlement*  
556 *Payments to the full extent permitted by the terms of the MSA, (iii) not amend the MSA in any manner*  
557 *that would materially impair the rights of the Holders, (iv) not limit or alter the rights of the*  
558 *Corporation to fulfill the terms of its agreements with such Holders, and (v) not in any way impair the*  
559 *rights and remedies of such Holders or the security for such Bonds until such Bonds, together with the*  
560 *interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf*  
561 *of such Holders, are fully paid and discharged.*

562 *§ 2.1-837. Construction and effect.*

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

573 *§ 9-385. Tobacco Indemnification and Community Revitalization Fund.*

574 *A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be*  
575 *deposited into the state treasury subject to the special nonreverting funds established by subsection B of*  
576 *this section and by § 32.1-360 and shall be included in general fund revenue calculations for purposes of*  
577 *subsection C of § 58.1-3524 and subsection B of § 58.1-3536.*

578 *B. There is hereby created in the state treasury a special nonreverting fund to be known as the*  
579 *Tobacco Indemnification and Community Revitalization Fund. The Fund shall be established on the*  
580 *books of the Comptroller. Fifty percent of the annual amount received by the Commonwealth from the*  
581 *Master Settlement Agreement shall be paid into the state treasury and credited to the Fund. There shall*  
582 *be paid into the state treasury and credited to the Fund annually fifty percent of all moneys payable in*  
583 *each year to the Commonwealth pursuant to the Master Settlement Agreement, without giving effect to*  
584 *the sale of any portion of such amounts payable. Interest earned on moneys in the Fund shall remain in*  
585 *the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end*  
586 *of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund*  
587 *shall be used solely for the purposes described in this chapter. Expenditures and disbursements from the*  
588 *Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written*  
589 *authorization signed by the chairman of the Commission or his designee. The Fund shall also consist of*  
590 *other moneys received by the Commission, from any source, for the purpose of implementing the*  
591 *provisions of this chapter.*

592 *§ 32.1-360. Virginia Tobacco Settlement Fund.*

593 *There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia*  
594 *Tobacco Settlement Fund. The Fund shall be established on the books of the Comptroller. Ten percent*  
595 *of the annual amount received by the Commonwealth from the Master Settlement Agreement shall be*  
596 *paid into the state treasury and credited to the Fund. There shall be paid into the state treasury and*  
597 *credited to the Fund annually ten percent of all moneys payable in each year to the Commonwealth*  
598 *pursuant to the Master Settlement Agreement, without giving effect to the sale of any portion of such*  
599 *amounts payable. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it.*  
600 *Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not*  
601 *revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the*  
602 *purposes described in this chapter. Expenditures and disbursements from the Fund shall be made by the*  
603 *State Treasurer on warrants issued by the Comptroller upon written authorization signed by the chairman*  
604 *of the Board or his designee. Moneys in the Fund shall be used for the purposes of discouraging,*  
605 *eliminating or preventing the use of tobacco products by minors, including but not limited to educational*  
606 *and awareness programs on the health effects of tobacco use on minors and laws restricting the*  
607 *distribution of tobacco products to minors.*