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SENATE BILL NO. 1347

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Hawkins
on February 4, 2003)

(Patron Prior to Substitute—Senator Hawkins)

A BILL to amend the Code of Virginia by adding in Title 15.2 a chapter numbered 61.1, consisting of sections numbered 15.2-6111 through 15.2-6126, relating to the Southside-Southwest Fiber Optic Network Authority.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 15.2 a chapter numbered 61.1, consisting of sections numbered 15.2-6111 through 15.2-6126, as follows:

CHAPTER 61.1.

SOUTHSIDE-SOUTHWEST FIBER OPTIC NETWORK AUTHORITY.

§ 15.2-6111. Definitions.

As used in this chapter, unless the context requires otherwise:

"Authority" means the Southside-Southwest Fiber Optic Network Authority created by this chapter.

"Board" means the board of directors of the Authority.

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

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

"Fiber optic network" means an infrastructure system providing a high-bandwidth optical fiber backbone for the provision of digital communication services, which system may include, but is not limited to, cables, conduit, ring structures, switching systems, nodes, and related facilities and equipment. The term shall not include any distribution or access lines from a node or other point on the backbone to potential residential or commercial retail customers; and such backbone shall only be constructed to serve communities or neighborhoods and not specific potential residential or commercial retail customers.

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

"Southside-Southwest region" means the portion of the Commonwealth consisting of tobacco-dependent communities, as such term is used in subdivision 2 of § 3.1-1112, and includes (i) the Southside Virginia Counties of Amelia, Appomattox, Brunswick, Buckingham, Campbell, Charlotte, Cumberland, Dinwiddie, Franklin, Greenville, Halifax, Henry, Lunenburg, Mecklenburg, Nottoway, Patrick, Pittsylvania, Prince Edward, Southampton, and Sussex and Cities of Danville, Emporia, Franklin, Martinsville, Petersburg, and South Boston, and (ii) the Southwest Virginia Counties of Bland, Buchanan, Carroll, Dickinson, Floyd, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wythe and Cities of Bristol, Galax, and Norton.

§ 15.2-6112. Authority created; purpose.

A. The Southside-Southwest Fiber Optic Network Authority is created as a body corporate and politic. The Authority is a political subdivision of the Commonwealth. The Authority is hereby constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the Authority of the powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function of the Commonwealth. As such it shall have, and is hereby vested with, the powers and duties hereinafter conferred in this chapter.

B. The Authority is created for the purpose of developing a fiber optic network to serve, on a wholesale basis, retail providers of broadband and other telecommunications services including, in the case of multi-channel video programming services, only franchised cable television system operators in the Southside-Southwest region. In furtherance of that purpose, and as otherwise specified in this chapter, the Authority may take any action necessary or appropriate to enhance the provision of broadband and other telecommunications services through a fiber optic network in the Southside-Southwest region and through the performance of any act or function that may be useful in developing, improving, increasing, or enhancing access by residents of retail providers of broadband and other telecommunications services in the Southside-Southwest region to such services as may be provided on a wholesale basis over such fiber optic networks.

§ 15.2-6113. Board of directors.

A. The Authority shall be governed by a board of directors in which all powers of the Authority shall be vested. The board shall consist of 11 directors appointed by the Commission. A majority of the directors shall also be members of the Commission.

60 B. Directors shall be appointed initially for staggered terms of 1, 2, 3, and 4 years. Subsequent
61 appointments shall be for terms of 4 years, except appointments to fill vacancies shall be for the
62 unexpired terms. All terms of office shall be deemed to commence upon the date of the initial
63 appointment to the Authority, and thereafter, in accordance with the provisions of the preceding
64 sentence. If, at the end of any term of office of any director a successor thereto has not been appointed,
65 then the director whose term of office has expired shall continue to hold office until his successor is
66 appointed and qualified. Each director shall, upon appointment or reappointment, before entering upon
67 his duties take and subscribe the oath prescribed by § 49-1.

68 C. The directors shall elect from their membership a chairman, a vice-chairman, and from their
69 membership or not, as they desire, a secretary and a treasurer, or a secretary-treasurer, who shall
70 continue to hold such office until their respective successors are elected.

71 D. The directors shall receive no salary, but the directors may be compensated such amount as may
72 be approved by the Commission, not to exceed \$50 per meeting, and shall be reimbursed for necessary
73 travel and other expenses incurred in the performance of their duties.

74 E. A majority of directors shall constitute a quorum of the board for the purposes of conducting its
75 business and exercising its powers and for all other purposes. No vacancy in the membership of the
76 board shall impair the right of a quorum to exercise all the powers and perform all the duties of the
77 Authority. The Authority shall keep detailed minutes of the board's proceedings, which shall be open to
78 public inspection at all times. It shall keep suitable records of its financial transactions.

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

83 G. Except as otherwise provided in this chapter, members of the board and employees of the
84 Authority shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et
85 seq.).

86 § 15.2-6114. Executive Director appointment; duties; staff.

87 A. The Authority shall appoint an Executive Director. The Executive Director shall be the chief
88 administrative officer of the Authority and serve at the pleasure of the board. The Executive Director
89 shall be paid from funds received by the Authority. No state funds shall be used to pay the salary or the
90 expenses of this office.

91 B. In addition to any other duties set forth in this chapter, the Executive Director shall:

92 1. Direct and supervise the administrative affairs and activities of the Authority in accordance with
93 its rules, regulations, and policies;

94 2. Attend all meetings and keep minutes of all proceedings;

95 3. Approve all expenses incidental to the operation of the Authority; and

96 4. Perform any other duty that the Authority requires for carrying out the provisions of this chapter.

97 C. The Executive Director shall be authorized to employ such staff as necessary to enable the
98 Authority to perform its duties as set forth in this chapter.

99 § 15.2-6115. Office.

100 The Authority shall, in the Southside-Southwest region, have and maintain its principal office, at
101 which all of its records shall be kept, and from which its business shall be transacted.

102 § 15.2-6116. Powers.

103 The Authority shall have the following powers together with all powers incidental thereto or
104 necessary for the performance of those hereinafter stated:

105 1. Adopt and alter an official seal;

106 2. Sue and be sued in its own name;

107 3. Adopt bylaws, rules, and regulations to carry out the provisions of this chapter;

108 4. Employ, either as regular employees or independent contractors, consultants, engineers, architects,
109 accountants, attorneys, financial experts, construction experts and personnel, superintendents, managers
110 and other professional personnel and agents as may be necessary in the judgment of the Authority, and
111 fix their compensation;

112 5. Determine the locations of, develop, establish, construct, erect, acquire, own, repair, remodel, add
113 to, extend, improve, equip, operate, regulate, and maintain 1 or more fiber optic networks and related
114 facilities to the extent necessary to accomplish the purposes of the Authority, provided such fiber optic
115 networks and related facilities shall not include any distribution or access lines from a node or other
116 point on the backbone to potential residential or commercial retail customers or neighborhoods and not
117 specific potential residential or commercial retail customers;

118 6. On a wholesale basis, lease capacity in the Authority's fiber optic network, on such terms and
119 conditions as the board shall approve, to retail providers of broadband and other telecommunications
120 services located in the Southside-Southwest region, provided the lease or use of any network capacity
121 for video programming shall only be permitted by 1 or more cable television system operators

franchised by a Virginia locality served by the network, and such capacity shall not be leased to or used by any municipality for the provision of cable television or other multi-channel video programming services;

7. Acquire real and personal property, including rights-of-way and other easements, through exercise of the power of eminent domain pursuant to the procedure set forth in Chapter 1.1 (§ 25-46.1 et seq.) of Title 25, provided that the condemnation of any property of a franchised cable television system or operator or a corporation possessing the power of eminent domain shall not be permitted;

8. Acquire, hold, lease, use, encumber, transfer, or dispose of real and personal property;

9. Enter into contracts of any kind, and execute all instruments necessary or convenient with respect to its carrying out the powers in this chapter to accomplish the purposes of the Authority;

10. Monitor the use and operation of facilities owned or developed under the provisions of this chapter;

11. Fix and revise from time to time and charge and collect nondiscriminatory rates, rents, fees, or other charges for the use of facilities or for services rendered in connection with the facilities;

12. Borrow money from any source for any valid purpose, including working capital for its operations, reserve funds, or interest, and to mortgage, pledge, or otherwise encumber the property or funds of the Authority and to contract with or engage the services of any person in connection with any financing, including financial institutions, issuers of letters of credit, or insurers;

13. Issue bonds under this chapter;

14. Receive and accept from the Commission and any other source, private or public, contributions, gifts, or grants of money or property;

15. Provide nondiscriminatory access to retail providers of broadband and other telecommunications services including, in the case of multi-channel video programming, only franchised cable television system operators, on a first-come, first-served basis to right-of-way, poles, conduits or other permanent distribution facilities owned, leased or operated by the Authority, unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities;

16. Notwithstanding any other provision of this chapter, reserve up to 25 percent of the capacity of the fiber optic network created pursuant to this chapter for non-commercial use by governmental entities and public institutions; and

17. Do all things necessary or convenient to carry out the powers granted by this chapter.

§ 15.2-6117. Powers not restrictive; exemptions from Public Procurement Act and the Virginia Personnel Act.

A. The Authority shall have the power to perform any act or carry out any function that is consistent with other provisions of state law and the provisions of this chapter.

B. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Authority in the exercise of any of its powers in accordance with this chapter, provided the Authority implements, by policy or regulation adopted by the board and approved by the Department of General Services, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of any capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

C. The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) shall not apply to the Authority.

§ 15.2-6118. Grants and loans from endowment.

The Authority may apply for and accept grants or loans of money or property from the endowment for any purpose authorized in this chapter. It may expend or use such money or property in accordance with any directions, requirements, or conditions that may be imposed by the Commission.

§ 15.2-6119. Bond issues.

A. The Authority may at any time and from time to time issue bonds for any valid purpose, including the establishment of reserves and the payment of interest. In this chapter the term "bonds" includes notes of any kind, interim certificates, refunding bonds, or any other evidence of obligation.

B. The bonds of any issue shall be payable solely from the property or receipts of the Authority, including, but not limited to:

1. Taxes, fees, charges, or other revenues payable to the Authority;

2. Payments by financial institutions, insurance companies, or others pursuant to letters or lines of credit, policies of insurance, or purchase agreements;

3. Investment earnings from funds or accounts maintained pursuant to a bond resolution or trust agreement; and

4. Proceeds of refunding bonds.

C. Bonds shall be authorized by resolution of the Authority and may be secured by a trust agreement by and between the Authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or outside the Commonwealth. The bonds shall:

1. Be issued at, above, or below par value, for cash or other valuable consideration, and mature at

183 a time or times, whether as serial bonds or as term bonds or both, not exceeding 40 years from their
184 respective dates of issue;

185 2. Bear interest at the fixed or variable rate or rates determined by the method provided in the
186 resolution or trust agreement;

187 3. Be payable at a time or times, in the denominations and form, and carry the registration and
188 privileges as to conversion and for the replacement of mutilated, lost, or destroyed bonds as the
189 resolution or trust agreement may provide;

190 4. Be payable in lawful money of the United States at a designated place;

191 5. Be subject to the terms of purchase, payment, redemption, refunding, or refinancing that the
192 resolution or trust agreement provides;

193 6. Be executed by the manual or facsimile signatures of the officers of the Authority designated by
194 the Authority, which signatures shall be valid at delivery even for one who has ceased to hold office;
195 and

196 7. Be sold in the manner and upon the terms determined by the Authority including private
197 (negotiated) sale.

198 D. Any resolution or trust agreement may contain provisions that shall be a part of the contract with
199 the holders of the bonds as to:

200 1. Pledging, assigning, or directing the use, investment, or disposition of receipts of the Authority or
201 proceeds or benefits of any contract and conveying or otherwise securing any property rights;

202 2. The setting aside of loan funding deposits, debt service reserves, capitalized interest accounts, cost
203 of issuance accounts and sinking funds, and the regulation, investment, and disposition thereof;

204 3. Limitations on the purpose to which or the investments in which the proceeds of sale of any issue
205 of bonds may be applied and restrictions to investments of revenues or bond proceeds in government
206 obligations for which principal and interest are unconditionally guaranteed by the United States of
207 America;

208 4. Limitations on the issuance of additional bonds and the terms upon which additional bonds may
209 be issued and secured and may rank on a parity with, or be subordinate or superior to, other bonds;

210 5. The refunding or refinancing of outstanding bonds;

211 6. The procedure, if any, by which the terms of any contract with bondholders may be altered or
212 amended and the amount of bonds the holders of which must consent thereto, and the manner in which
213 consent shall be given;

214 7. Defining the acts or omissions that shall constitute a default in the duties of the Authority to
215 bondholders and providing the rights or remedies of such holders in the event of a default, which may
216 include provisions restricting individual right of action by bondholders;

217 8. Providing for guarantees, pledges of property, letters of credit, or other security, or insurance for
218 the benefit of bondholders; and

219 9. Any other matter relating to the bonds that the Authority determines appropriate.

220 E. No member of the Authority nor any person executing the bonds on behalf of the Authority shall
221 be liable personally for the bonds or subject to any personal liability by reason of the issuance of the
222 bonds.

223 F. The Authority may enter into agreements with agents, banks, insurers, any political subdivision of
224 the Commonwealth or others for the purpose of enhancing the marketability of, or as security for, its
225 bonds.

226 G. A pledge by the Authority of revenues as security for an issue of bonds shall be valid and binding
227 from the time the pledge is made. The revenues pledged shall immediately be subject to the lien of the
228 pledge without any physical delivery or further act, and the lien of any pledge shall be valid and
229 binding against any person having any claim of any kind in tort, contract or otherwise against the
230 Authority, irrespective of whether the person has notice. No resolution, trust agreement or financing
231 statement, continuation statement, or other instrument adopted or entered into by the Authority need be
232 filed or recorded in any public record other than the records of the Authority in order to perfect the
233 lien against third persons, regardless of any contrary provision of public general or public local law.

234 H. Except to the extent restricted by an applicable resolution or trust agreement, any holder of
235 bonds issued under this chapter or a trustee acting under a trust agreement entered into under this
236 chapter, may, by any suitable form of legal proceedings, protect and enforce any rights granted under
237 the laws of Virginia or by any applicable resolution or trust agreement.

238 I. The Authority may issue bonds to refund any of its bonds then outstanding, including the payment
239 of any redemption premium and any interest accrued or to accrue to the earliest or any subsequent date
240 of redemption, purchase or maturity of the bonds. Refunding bonds may be issued for the public
241 purposes of realizing savings in the effective costs of debt service, directly or through a debt
242 restructuring, for alleviating impending or actual default and may be issued in one or more series in an
243 amount in excess of that of the bonds to be refunded.

244 § 15.2-6120. Investments in bonds.

Any financial institution, investment company, insurance company or association, and any personal representative, guardian, trustee, or other fiduciary, may legally invest any moneys belonging to them or within their control in any bonds issued by the Authority.

§ 15.2-6121. Bonds are tax exempt.

The Authority shall not be required to pay any taxes or assessments of any kind whatsoever, and its bonds, their transfer, the interest payable on them, and any income derived from them, including any profit realized in their sale or exchange, shall be exempt at all times from every kind and nature of taxation by the Commonwealth or by any of its political subdivisions, municipal corporations, or public agencies of any kind.

§ 15.2-6122. Authority financing fund; use.

A. There is hereby created a Southside-Southwest Fiber Optic Network Authority Financing Fund ("Fund"). The Authority shall use the Fund as a nonlapsing revolving fund for carrying out the provisions of this chapter.

B. All of the following receipts of the Authority shall be placed in the Fund: (i) proceeds from the sale of bonds, (ii) revenues collected or received from any source under the provisions of this chapter, and (iii) any other revenues under the jurisdiction of the Authority.

C. The Authority shall pay all expenses and make all expenditures from the Fund. To the extent deemed appropriate by the Authority, the receipts of the Fund shall be pledged to and charged with the payment of debt service on Authority bonds and all reasonable charges and expenses related to Authority borrowing and the management of Authority obligation.

§ 15.2-6123. Tax revenues of the Commonwealth or any other political subdivision not pledged.

Nothing in this chapter shall be construed as authorizing the pledging of the faith and credit of the Commonwealth, or any of its revenues, or the faith and credit of any other political subdivision of the Commonwealth, or any of its revenues, for the payment of any bonds.

§ 15.2-6124. Cooperation between the Authority and other political subdivisions.

The Authority may enter into agreements with any other political subdivision of the Commonwealth for joint or cooperative action in accordance with § 15.2-1300.

§ 15.2-6125. Additional duties.

In addition to the duties set forth elsewhere in this chapter, the Authority shall:

1. Keep records as are consistent with sound business practices and accounting records using generally accepted accounting practices;

2. Cause an audit by an independent certified public accountant to be made of accounts and transactions at the conclusion of each fiscal year, and furnish copies of each such audit to the Commission;

3. Be subject to audit and examination at any reasonable time of its accounts and transactions by the Auditor of Public Accounts; and

4. Submit a detailed annual report of its activities and financial standing to the Governor and to the Commission.

§ 15.2-6126. Chapter liberally construed; spending by the Authority and the Commission.

A. This chapter shall constitute full and complete authority for the doing of the acts and things herein authorized and shall be liberally construed to effect the purposes hereof.

B. The Commission and the Authority shall be authorized to expend funds outside the Southside-Southwest region to the extent necessary to achieve the purposes of this chapter.