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SENATE BILL NO. 939

Offered January 12, 2005

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A Bill to authorize the issuance of bonds, in an amount up to \$10,563,000, plus financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring, constructing and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit and taxing power of the Commonwealth for the payment of such bonds; to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

Patron—Chichester

Referred to Committee on Finance

Whereas, Article X, Section 9 (c) of the Constitution of Virginia, provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth.

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia.

Be it enacted by the General Assembly of Virginia:

1. § 1. Title. This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2005."

§ 2. Authorization of bonds and BANs. The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ..." in an aggregate principal amount not exceeding \$10,563,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:

Institution Project Title Project Code Amount

George Mason University	Renovate
Commonwealth	
	and
Dominion Housing	16690 \$ 1,925,000
University of Virginia's	New
Residence Hall	16963
\$ 7,185,000	
College at Wise	
Virginia Military	Renovate
and Enlarge	
Institute	Crozet
Hall and Parking	16684 \$ 1,453,000

INTRODUCED

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58 Total \$ 10,563,000

59 § 3. *Application of Proceeds.* The proceeds, including any premium, of bonds and BANs (except the
60 proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii)
61 refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together
62 with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the
63 acquisition, construction, renovation, enlargement, improvement and equipping of the authorized capital
64 projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated
65 by BANs, (ii) refunding bonds and (iii) refunding BANs shall be used to pay such BANs, refunded bonds
66 and refunded BANs.

67 § 4. *Details, sale of bonds and BANs.* Bonds and BANs shall be dated, and may be made redeemable
68 before their maturity or maturities at such price or prices or within such price parameters, all as may
69 be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall
70 be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by
71 formula or other method, and may contain such other provisions, all as determined by the Treasury
72 Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if
73 any, and the interest on bonds and BANs shall be payable in lawful money of the United States of
74 America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board.
75 The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating
76 agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs.
77 Bonds and BANs issued in certificated form may be issued under a system of book entry for recording
78 the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The
79 Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or
80 places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or
81 at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or
82 times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not
83 exceeding five years from their date or dates.

84 The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated
85 sale, or private placement and for such price or within such price parameters as it may determine, by
86 and with the consent of the Governor, to be in the best interest of the Commonwealth.

87 In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to
88 time, and may be sold and issued at the same time with other general obligation bonds and BANs,
89 respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a)(3), (b), and (c) of the
90 Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of
91 Virginia General Obligation Bonds Bond Anticipation Notes, Series"

92 § 5. *Execution of bonds and BANs.* Certificated bonds and BANs shall be signed on behalf of the
93 Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures,
94 and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear
95 the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as
96 the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign
97 them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds
98 or BANs ceases to be such officer before delivery, such signature or facsimile signature shall
99 nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office
100 until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by,
101 such persons as at the actual time of execution are the proper officers to sign such bond or BAN
102 although, at the date of such bond or BAN, such persons may not have been such officers.

103 § 6. *Sources for payment of expenses.* All expenses incurred under this act shall be paid from the
104 proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were
105 authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.

106 § 7. *Revenues.* Each institution of higher learning mentioned above is hereby authorized (i) to fix,
107 revise, charge and collect rates, fees and charges for or in connection with the use, occupancy and
108 services of each capital project mentioned above or the system of which such capital project is a part
109 and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues
110 resulting from such rates, fees and charges and remaining after payment of the expenses of operating
111 the project or system, as the case may be. Each such institution is further authorized to create debt
112 service and sinking funds for the payments of the principal of, premium, if any, and interest on the
113 bonds and other reserves required by any agency of the United States of America purchasing the bonds
114 or any portion thereof.

115 § 8. *Investments and Contracts.* A. Pending the application of the proceeds of the bonds or BANs
116 (including refunding bonds and BANs) to the purpose for which they have been authorized and the
117 application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by
118 the State Treasurer in securities that are legal investments under the laws of the Commonwealth for
119 public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from

the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.

B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow or other basis desired by the Commonwealth. Such contract or other arrangement 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 Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, 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. The determinations referred to in this subsection may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.

C. Any money set aside and pledged to secure payments of bonds, BANs or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A. of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B. of this section.

§ 9. Security for bonds and BANs. The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.

§ 10. Exemption of interest from tax. The bonds and BANs issued under the provisions of this Act, 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 county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.

§ 11. Refunding bonds and BANs. The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.

§ 12. Defeasance. Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9 (b) or (c) of the Constitution of Virginia, as the case may be.

§ 13. Severability. The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.

2. That an emergency exists and this act is in force from its passage.