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SENATE BILL NO. 770

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 31, 2007)

(Patron Prior to Substitute—Senator Chichester)

A *BILL to authorize the issuance of bonds, in an amount up to \$103,550,000 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; and 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.*

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 2007."*

§ 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 \$103,550,000, 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
Christopher Newport University	Construct Residence Hall V	17359	7,667,000
George Mason University	Renovate Commonwealth and Dominion housing facilities	16690	1,770,000
George Mason University	Renovate student housing, President's Park I	17050	7,200,000
George Mason University	Construct student housing VII	17056	4,000,000
James Madison University	Renovate Bluestone Residence Hall, Phase 3	16687	2,360,000
James Madison University	Construct Dining Hall	17439	3,000,000
Old Dominion	Construct Residence Hall,		

59	University	Phase II	17342	3,535,000
60	Virginia Commonwealth University	Monroe Park Housing		
61	University		17109	15,273,000
62	Virginia Polytechnic Institute and State University	Construct New Residence Hall		
63	Institute and State University		17478	27,000,000
64	University			
65	Virginia State University	Construct Residence Halls	17307	2,068,000
66	University			
67	Virginia State University	Construct Dining Hall	17309	3,424,000
68	University			
69	Virginia State University	Construct Two Residence Halls	17479	26,253,000
70	University			
71	Total			\$103,550,000

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

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

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

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

105 § 5. *Execution of bonds and BANs.* Certificated bonds and BANs shall be signed on behalf of the
106 Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures,
107 and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear
108 the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as
109 the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign
110 them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds
111 or BANs ceases to be such officer before delivery, such signature or facsimile signature shall
112 nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office
113 until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by,
114 such persons as at the actual time of execution are the proper officers to sign such bond or BAN
115 although, at the date of such bond or BAN, such persons may not have been such officers.

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

119 § 7. *Revenues.* Each institution of higher learning mentioned above is hereby authorized (i) to fix,

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

§ 8. Investments and Contracts.

A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for 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 that 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 paragraph 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 of 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

181 *the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be*
182 *refunded are then subject to redemption.*

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

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

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