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**HOUSE BILL NO. 41**

Offered January 13, 2010

Prefiled December 18, 2009

*A BILL to authorize the Treasury Board to issue bonds pursuant to Article X, Section 9 (c) of the Constitution of Virginia in an amount up to \$206,870,000 plus financing costs, to finance revenue-producing capital projects at institutions of higher learning of the Commonwealth.*

Patrons—Putney, Albo, Athey, Crockett-Stark, Hugo, Landes, Lingamfelter and Rust

Referred to Committee on Appropriations

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; and

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; now, therefore,

**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 2010."*

**§ 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 \$206,870,000, 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 and 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	Renovate Santoro Residence Hall	17837	\$5,000,000
Christopher Newport University	Construct Residence Hall VII	17857	\$37,000,000
George Mason University	Construct Housing VII	17367	\$750,000
George Mason University	Renovate Student Apartments	17844	\$3,098,000
George Mason University	Renovate Commons	17841	\$16,002,000
Norfolk State University	Construct Residential Housing	17818	\$46,001,000
The College of William and Mary in Virginia	Construct New Dormitory	17808	\$25,800,000
The College of William and Mary in Virginia	Renovate Residence Halls	17811	\$4,500,000
Virginia Commonwealth University	Construct West Grace Housing and Parking,		

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57		Phase I	17832	\$33,566,000
58	Virginia Polytechnic	Construct Academic		
59	Institute and State	and Student Affairs		
60	University	Building	17859	\$35,153,000
61	Total			\$206,870,000

62 § 3. Application of proceeds.

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

71 § 4. Details, sale of bonds and BANs.

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

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

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

97 § 5. Execution of bonds and BANs.

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

109 § 6. Sources for payment of expenses.

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

113 § 7. Revenues.

114 The institution of higher learning named above is hereby authorized (i) to fix, revise, charge and  
 115 collect rates, fees and charges for or in connection with the use, occupancy and services of each capital  
 116 project mentioned above or the system of which such capital project is a part and (ii) to pledge to the  
 117 portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates,

118 fees and charges and remaining after payment of the expenses of operating the project or system, as the  
 119 case may be. The institution is further authorized to create debt service and sinking funds for the  
 120 payments of the principal of, premium, if any, and interest on the bonds and other reserves required by  
 121 any agency of the United States of America purchasing the bonds or any portion thereof.

122 § 8. Investments and contracts.

123 A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and  
 124 BANs) to the purpose for which they have been authorized and the application of funds set aside for the  
 125 purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that  
 126 are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the  
 127 case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of  
 128 bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and  
 129 shall be used in the same manner as required for principal of the bonds or BANs.

130 B. The Commonwealth may enter into any contract or other arrangement that is determined to be  
 131 necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by  
 132 bonds, BANs or investments, in whole or in part, on the interest rate, cash flow or other basis desired  
 133 by the Commonwealth. Such contract or other arrangement may include without limitation, contracts  
 134 commonly known as interest rate swap agreements, and futures or contracts providing for payments  
 135 based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into  
 136 by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i)  
 137 agreement which secures bonds or BANs or (ii) investment, or contract providing for investment,  
 138 otherwise authorized by law. These contracts and arrangements may contain such payment, security,  
 139 default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due  
 140 consideration to the creditworthiness of the counterparty or other obligated party, including any rating  
 141 by any nationally recognized rating agency, and any other criteria as may be appropriate. The  
 142 determinations referred to in this paragraph may be made by the Treasury Board or any public funds  
 143 manager with professional investment capabilities duly authorized by the Treasury Board to make such  
 144 determinations.

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

149 § 9. Security for bonds and BANs.

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

161 § 10. Exemption of interest from tax.

162 The bonds and BANs issued under the provisions of this Act, their transfer and the income  
 163 therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from  
 164 taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof.  
 165 The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to  
 166 such effect, and to require the participating institutions to do and to covenant likewise, to the extent  
 167 that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and  
 168 BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made  
 169 subject to inclusion in gross income of the holders thereof for federal income tax purposes.

170 § 11. Refunding bonds and BANs.

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

178 § 12. Defeasance.

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

183 *§13. Severability.*

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

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