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SENATE BILL NO. 1440

Offered January 23, 2015

A BILL to amend and reenact §§ 3.2-3100 through 3.2-3104, 3.2-3108, 3.2-3111, and 62.1-203 of the Code of Virginia and to amend the Code of Virginia by adding in Title 3.2 a chapter numbered 31.1, consisting of sections numbered 3.2-3112 through 3.2-3121, relating to the Tobacco Region Revitalization Commission; financial viability and feasibility study prior to disbursement; Virginia Tobacco Region Revolving Fund.

Patron—Ruff

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-3100 through 3.2-3104, 3.2-3108, 3.2-3111, and 62.1-203 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 3.2 a chapter numbered 31.1, consisting of sections numbered 3.2-3112 through 3.2-3121, as follows:

§ 3.2-3100. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Active tobacco producer" means a person: (i) actively engaged in planting, growing, harvesting, and marketing of flue-cured or burley tobacco, or who shares in the variable expenses of producing the crop, and is therefore entitled to share in the revenue derived from marketing the crop; and (ii) who produces such crop on a farm where tobacco was produced for the 1998 crop year, or any subsequent crop year upon which the Commission may determine to base indemnification payments, pursuant to a tobacco farm marketing quota or farm acreage allotment as established under the Agriculture Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).

"Agreement" means the agreement or agreements between the Commonwealth, as seller of the Tobacco Assets, and the Corporation, as purchaser of the Tobacco Assets. The sale by the Commonwealth of the Tobacco Assets pursuant to any such agreement shall be a true sale and not a borrowing.

"Commission" means the Tobacco Indemnification and Community Region Revitalization Commission created pursuant to § 3.2-3101.

"Commission Allocation" means 50 percent of the annual amount received under the Master Settlement Agreement by the Commonwealth, or that would have been received but for a sale of such allocation pursuant to an agreement, between the commencing and ending dates specified in the agreement.

"Corporation" means the Tobacco Settlement Financing Corporation as created under state law.

"Endowment" means the Tobacco Indemnification and Community Revitalization Endowment established pursuant to § 3.2-3104.

"Fund" means the Tobacco Indemnification and Community Revitalization Fund established pursuant to § 3.2-3106.

"Master Settlement Agreement" 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.

"Period of sale" means the time during which a purchaser under an agreement is entitled to receive the Commission Allocation.

"Quota holder" means an owner of a farm on July 1, 1998, or July 1 of any subsequent crop year upon which the Commission may determine to base indemnification payments, for which a tobacco farm marketing quota or farm acreage allotment was established under the Agriculture Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).

"Strategic Plan" means the strategic plan required pursuant to subsection C of § 3.2-3103.

"Tobacco Assets" means all right, title, and interest in and to the portion of the Commission Allocation that may be sold to the Corporation.

"Tobacco farmer" means any person who is an active tobacco producer, a quota holder, or both.

§ 3.2-3101. Tobacco Region Revitalization Commission created; purposes.

The Tobacco Indemnification and Community Region Revitalization Commission is created as a body corporate and a political subdivision of the Commonwealth and as such shall have, and is vested with, all of the politic and corporate powers as are set forth in this chapter. The Commission is established for the purposes of determining the appropriate recipients of moneys in the Tobacco Indemnification and

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59 Community Revitalization Fund and causing distribution of such moneys for the purposes provided in
 60 this chapter, including using moneys in the Fund to: (i) provide payments to tobacco farmers as
 61 compensation for the adverse economic effects resulting from loss of investment in specialized tobacco
 62 equipment and barns and lost tobacco production opportunities associated with a decline in quota; and
 63 (ii) revitalize tobacco dependent communities. The Commission shall have only those powers
 64 enumerated in § 3.2-3103.

65 **§ 3.2-3102. Membership; terms; vacancies; compensation and expenses; chairman; chairman's**
 66 **executive summary.**

67 A. The Commission shall be composed of ~~34~~ 25 members as follows:

68 1. Six members of the House of Delegates appointed by the Speaker of the House of Delegates;

69 2. Four members of the Senate appointed by the Senate Committee on Rules;

70 3. The Secretary of Commerce and Trade or his designee;

71 4. The Secretary of Finance or his designee;

72 5. The Secretary of Agriculture and Forestry or his designee;

73 6. ~~Three nonlegislative citizen members who shall be active flue-cured tobacco producers appointed~~
 74 ~~by the Governor. Of the active flue-cured tobacco producers, two shall be appointed by the Governor~~
 75 ~~from a list of six persons provided by the members of the General Assembly appointed to the~~
 76 ~~Commission;~~

77 7. ~~Three nonlegislative citizen members who shall be active burley tobacco producers appointed by~~
 78 ~~the Governor. Of the active burley tobacco producers, one member shall be appointed by the Governor~~
 79 ~~from a list of three persons provided by the members of the General Assembly appointed to the~~
 80 ~~Commission;~~

81 8. One nonlegislative citizen member who shall be a representative of the Virginia Farm Bureau
 82 Federation appointed by the Governor from a list of at least three persons provided by Virginia Farm
 83 Bureau Federation; and

84 ~~9.~~ 7. Eleven members shall be nonlegislative citizens appointed by the Governor. Of the 11
 85 nonlegislative citizen members, three shall be appointed by the Governor from a list of nine provided by
 86 the members of the General Assembly appointed to the Commission.

87 With the exception of the Secretary of Commerce and Trade or his designee, the Secretary of
 88 Finance or his designee and the Secretary of Agriculture and Forestry or his designee, all members of
 89 the Commission shall reside in the Southside and Southwest regions of the Commonwealth and shall be
 90 subject to confirmation by the General Assembly. To the extent feasible, appointments representing the
 91 Southside and Southwest regions shall be proportional to the tobacco quota production of each region.
 92 *Thirteen of the 25 members shall have experience in business, economic development, investment*
 93 *banking, finance, or education.*

94 Except as otherwise provided herein, all appointments shall be for terms of four years each.
 95 Legislative members, the Secretary of Commerce and Trade, the Secretary of Finance, and the Secretary
 96 of Agriculture and Forestry or his designee shall serve terms coincident with their terms of office. No
 97 nonlegislative citizen member shall be eligible to serve more than two successive four-year terms. After
 98 expiration of a term of three years or less, two additional four-year terms may be served by such
 99 member if appointed thereto. Appointments to fill vacancies, other than by expiration of a term, shall be
 100 made for the unexpired terms. Any appointment to fill a vacancy shall be made in the same manner as
 101 the original appointment. The remainder of any term to which a member is appointed to fill a vacancy
 102 shall not constitute a term in determining the member's eligibility for reappointment.

103 ~~The initial appointments of the active flue-cured tobacco producers, the active burley tobacco~~
 104 ~~producers, and other nonlegislative citizen members shall be as follows: one active flue-cured tobacco~~
 105 ~~producer, one active burley tobacco producer and four nonlegislative citizen members shall be appointed~~
 106 ~~for terms of two years; one active flue-cured tobacco producer, one active burley tobacco producer and~~
 107 ~~four nonlegislative citizen members shall be appointed for terms of three years; and one active~~
 108 ~~flue-cured tobacco producer, one active burley tobacco producer and three nonlegislative citizen~~
 109 ~~members shall be appointed for terms of four years. Thereafter all appointments shall be for terms of~~
 110 ~~four years.~~

111 B. The Commission shall appoint from its membership a chairman and a vice-chairman, both of
 112 whom shall serve in such capacities at the pleasure of the Commission. The chairman, or in his absence,
 113 the vice-chairman, shall preside at all meetings of the Commission. The meetings of the Commission
 114 shall be held on the call of the chairman or whenever the majority of the members so request. A
 115 majority of members of the Commission serving at any one time shall constitute a quorum for the
 116 transaction of business.

117 C. Legislative members of the Commission shall receive such compensation as is set forth in
 118 § 30-19.12, and nonlegislative members shall receive such compensation for the performance of their
 119 duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary
 120 expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Such

121 compensation and expenses shall be paid from the Fund.

122 D. Members and employees of the Commission shall be subject to the standards of conduct set forth
123 in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be removed
124 from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set
125 forth therein.

126 E. Except as otherwise provided in this chapter, members and employees of the Commission shall be
127 subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

128 F. The chairman of the Commission shall submit to the Governor and the General Assembly an
129 annual executive summary of the interim activity and work of the Commission no later than the first
130 day of each regular session of the General Assembly. The executive summary shall be submitted as
131 provided in the procedures of the Division of Legislative Automated Systems for the processing of
132 legislative documents and reports and shall be posted on the General Assembly's website.

133 **§ 3.2-3103. Powers and duties of the Tobacco Region Revitalization Commission.**

134 A. The Commission shall have the power and duty to:

- 135 1. Adopt, use, and alter at will an official seal;
- 136 2. Make bylaws for the management and regulation of its affairs;
- 137 3. Maintain an office at such place or places within the Commonwealth as it may designate;
- 138 4. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or
139 bequeathed to the Commission, absolutely or in trust, for the purposes for which the Commission is
140 created;

141 5. Determine how moneys in the Fund are to be distributed ~~and to authorize~~;

142 6. *Authorize* grants, loans, or other distributions of moneys in the Fund for the purposes set forth in
143 this chapter;

144 7. *For each economic development grant or award, including a grant from the Tobacco Region
145 Opportunity Fund, require a dollar-for-dollar match from the receiving entity. Performance bonds shall
146 be considered acceptable matching payment. No more than 25 percent of the match shall be in-kind;*

147 8. *Adopt policies governing the Tobacco Region Opportunity Fund, including a repayment policy.
148 The Commission shall apply the policies consistently;*

149 9. *Enter into a contractual or employment agreement with a financial viability manager (the
150 Manager). The management agreement shall require the Manager to provide a written financial viability
151 and feasibility report to the Commission as to the financial propriety of certain loans, grants, or other
152 distributions of money made for the revitalization of a tobacco-dependent locality. The Commission shall
153 not make any loan, except a loan made through the Virginia Tobacco Region Revolving Fund created in
154 Chapter 31.1 (§ 3.2-3112 et seq.); grant; or other distribution of money until the Manager has provided
155 the Commission with a written recommendation as to the financial viability and feasibility of the
156 proposed distribution of funds. However, nothing in this section shall eliminate consideration of
157 strategic economic initiatives;*

158 6. 10. Make and execute contracts and all other instruments and agreements necessary or convenient
159 for the exercise of its powers and functions;

160 7. 11. Invest its funds as provided in this chapter or permitted by applicable law; and

161 8. 12. Do any lawful act necessary or appropriate to carry out the powers herein granted or
162 reasonably implied, including use of whatever lawful means may be necessary and appropriate to
163 recover any payments wrongfully made from the Fund.

164 B. The Commission shall undertake studies and gather information and data in order to determine: (i)
165 the economic consequences of the reduction in or elimination of quota for tobacco growers; (ii) the
166 potential for alternative cash crops; and (iii) any other matters the Commission believes will affect
167 tobacco growers in the Commonwealth.

168 C. *The Commission shall at least biennially develop a strategic plan containing specific priorities,
169 measureable goals, and quantifiable outcomes. In developing the Strategic Plan, the Commission shall
170 solicit input from local and regional economic developers, the Virginia Economic Development
171 Partnership, the Virginia Department of Housing and Community Development, the Virginia Tourism
172 Authority, the Virginia Resources Authority, and the Center for Rural Virginia. The Strategic Plan shall
173 state how each Fund award is consistent with the Commission's achievement of measurable goals and
174 outcomes and its advancement of the specific priorities of the Strategic Plan. The Strategic Plan shall
175 also state how awards from the Fund are projected to affect key economic indicators of employment,
176 income, educational attainment, and return on investment.*

177 D. *The Commission shall develop a publicly available online database of all Commission awards,
178 listing for each project the project's goals, the means by which the project fits into the Strategic Plan,
179 the project's expected and achieved outcomes, and the total amount of funding the Commission has
180 awarded to the project through any prior grants.*

181 E. The Commission shall submit a report annually to the Governor and the General Assembly.

182 § 3.2-3104. Tobacco Indemnification and Community Revitalization Endowment.

183 A. There is hereby established in the state treasury a special fund to be designated the "Tobacco
184 Indemnification and Community Revitalization Endowment." The Endowment shall receive any proceeds
185 from any sale of all or any portion of the Commission Allocation, and any gifts, grants and
186 contributions that are specifically designated for inclusion in such Endowment. No part of the
187 Endowment, neither corpus nor income, or interest thereon, shall revert to the general fund of the state
188 treasury. The Endowment shall be under the management and control of the Treasury Board, and the
189 Treasury Board shall have such powers and authority as may be necessary to exercise such management
190 and control consistent with the provisions of this section. The income of the Endowment shall be paid
191 out, not less than annually, to the Fund. In addition, up to ~~40~~ *six* percent of the corpus of the
192 Endowment shall be paid to the Fund annually upon request of the Commission, *by majority vote*, to the
193 Treasury Board. Upon two-thirds vote of the Commission, up to ~~15~~ *10* percent of the corpus of the
194 Endowment shall be so paid. *Upon three-fourths vote of the Commission, up to 15 percent of the corpus*
195 *of the Endowment shall be so paid.* No use of proceeds shall be made that would cause bonds issued on
196 a tax-exempt basis to be deemed taxable. For purposes of this section, "income" of the Endowment
197 means at the time of determination the lesser of the available cash in, or the realized investment income
198 for the applicable period of, the Endowment, and "corpus" of the Endowment means at the time of
199 determination the sum of the proceeds from the sale of all or any portion of the Commission Allocation,
200 any gifts, grants, and contributions that have been credited to such Endowment, and any income not
201 appropriated and withdrawn from the Endowment prior to June 30 of each year, less withdrawals from
202 the corpus. Determinations by the Treasury Board, or the State Treasurer on behalf of the Treasury
203 Board, as to the amount of income or the amount of the corpus shall be conclusive.

204 B. The Treasury Board shall serve as trustee of the Endowment and the corpus and income of the
205 Endowment shall be withdrawn and credited to the Fund by order of the Treasury Board as provided in
206 subsection A. The State Treasurer shall be custodian of the funds credited to the Endowment. The
207 Treasury Board shall have full power to invest and reinvest funds credited to the Endowment in
208 accordance with the provisions of the Uniform Prudent Management of Institutional Funds Act
209 (§ 64.2-1100 et seq.) and, in addition, as otherwise provided by law. The Treasury Board may borrow
210 money in such amounts as may be necessary whenever in its judgment it would be more advantageous
211 to borrow money than to sell securities held for the Fund. Any debt so incurred may be evidenced by
212 notes duly authorized by resolution of the Treasury Board, such notes to be retired no later than the end
213 of the biennium in which such debt is incurred. The Treasury Board may commingle, for purposes of
214 investment, the corpus of the Endowment provided that it shall appropriately account for the investments
215 credited to the Endowment. The Treasury Board may hire independent investment advisors and
216 managers as it deems appropriate to assist with investing the Endowment. The expenses of making and
217 disposing of investments, such as brokerage commissions, legal expenses related to a particular
218 transaction, investment advisory and management fees and expenses, transfer taxes, and other customary
219 transactional expenses shall be payable out of the income of the Endowment.

220 Not less than annually and more frequently if so desired by the Commission or requested by the
221 Treasury Board, the Commission shall provide to the Treasury Board schedules of anticipated
222 disbursements from the Fund for the current and succeeding fiscal year, and the Treasury Board shall, to
223 the extent practicable, take into account such schedules and changes thereto in scheduling maturities and
224 redemptions of its investments of the Endowment.

225 § 3.2-3108. Distribution of Fund.

226 A. The Fund shall be distributed by the Commission for the following purposes:

227 1. The compensation of Virginia tobacco farmers for the decline or elimination of the tobacco quota
228 based on averaging the basic burley and flue-cured quota as allocated by the USDA for the crop years
229 1995 through 1998.

230 To the extent quota holders in Virginia are not otherwise compensated by a national tobacco
231 community trust fund or a federal tobacco loss assistance program that is based on substantially the
232 same distribution criteria established by the Commission for indemnification payments and to the extent
233 moneys are available in the Fund, the Fund shall be used to compensate quota holders in an amount
234 equal to the total lost asset value in quota incurred annually by such quota holders.

235 To the extent active tobacco producers in Virginia are not otherwise compensated by a national
236 tobacco community trust fund or a federal tobacco loss assistance program that is based on substantially
237 the same distribution criteria established by the Commission for indemnification payments and to the
238 extent moneys are available in the Fund, the Fund shall be used to compensate active tobacco producers
239 for the economic loss resulting from any annual quota reduction.

240 For the purposes of this section, the total asset loss value in quota and economic losses for tobacco
241 farmers in Virginia shall be estimated to be \$1.2 billion.

242 The Commission may establish criteria for determining economic loss resulting from any annual
243 quota reduction, including any similar criteria established pursuant to the creation of a national tobacco

244 community trust fund;

245 2. The stimulation of economic growth and development in tobacco-dependent communities in an
246 equitable manner throughout the southside and southwest regions of the Commonwealth, to assist such
247 communities in reducing their dependency on, or finding alternative uses for, tobacco and
248 tobacco-related business; and

249 3. Scientific research performed at one of the Commonwealth's National Cancer Institute-designated
250 research institutes designed to advance the treatment and prevention of cancers that directly impact the
251 citizens of tobacco-dependent communities throughout the southside and southwest regions of the
252 Commonwealth.

253 B. The Commission may require that as a condition of receiving any grant or loan incentive that is
254 based on employment goals, a recipient company must provide copies of employer quarterly payroll
255 reports provided to the Virginia Employment Commission to verify the employment status of any
256 position included in the employment goal.

257 *The Commission shall require that each project have an accountability matrix. For an economic
258 development program, the matrix shall be based on return on investment, jobs, wages, and capital
259 investment. For a scholarship program, the matrix shall be based on attainment of bachelor's degrees,
260 credentials, or jobs. For a health care program, the matrix should be based on health care outcomes.*

261 *The Commission shall require each applicant to provide with its application (i) baseline figures, (ii)
262 explicit and quantified outcome expectations, (iii) the method used to calculate outcome expectations,
263 (iv) details on the timing of the expected outcomes, and (v) a specific link to economic revitalization and
264 the Strategic Plan.*

265 *The Commission shall require that as a condition of receiving any grant or loan incentive each
266 project (a) demonstrate how it will address low employment levels, per capita income, educational
267 attainment, or other workforce indicators; (b) be consistent with the Strategic Plan; and (c) receive a
268 written recommendation as to its financial viability and feasibility from the Manager pursuant to
269 subdivision A 9 of § 3.2-3103.*

270 **§ 3.2-3111. Confidentiality of information.**

271 A. The Commission shall hold in confidence the personal and financial information supplied to it, or
272 maintained by it, concerning tobacco farmers, including names, addresses, and payment information. The
273 Commission may require any tobacco farmer or other applicant for payments from the Fund to provide
274 his social security or taxpayer identification number.

275 B. Notwithstanding the foregoing, personal and financial information supplied to or maintained by
276 the Commission relating to tobacco farmers may be used, exchanged, and disclosed at the Commission's
277 discretion as may be necessary or appropriate to make payments under, administer, or enforce this
278 chapter and related state and federal laws, any other state or federal tobacco indemnification or loss
279 assistance program, or a national tobacco community trust fund.

280 C. Nothing in this section shall prohibit the Commission, in its discretion, from releasing any
281 information that has been transformed into a statistical or aggregate form that does not allow the
282 identification of the person who supplied particular information or the sum of money received by a
283 particular recipient.

284 D. Personal and financial information supplied by or maintained on persons or entities applying for
285 or receiving distributions from the Fund for economic growth and development, as well as specific
286 information relating to the amount and identity of recipients of such distributions, shall be subject to
287 disclosure in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). The
288 provisions of that Act applicable to records or meetings of the Virginia Economic Development
289 Partnership or other state or local economic development entities shall apply mutatis mutandis to the
290 Commission *and the Manager selected pursuant to subdivision A 9 of § 3.2-3103.*

291 E. The provisions of this section shall also apply to any department, agency, institution, political
292 subdivision, or employee of the Commonwealth or a political subdivision that receives personal or
293 financial information from the Commission in order to process checks for payments from the Fund or to
294 assist the Commission with the administration and enforcement of this chapter.

295 **PART D.**

296 **TOBACCO INDEMNIFICATION AND COMMUNITY REGION REVITALIZATION COMMISSION**
297 **AND VIRGINIA TOBACCO REGION REVOLVING FUND.**

298 **CHAPTER 31.1.**

299 **VIRGINIA TOBACCO REGION REVOLVING FUND.**

300 **§ 3.2-3112. Definitions.**

301 *As used in this chapter, unless the context requires a different meaning:*

302 *"Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq.) of*
303 *Title 62.1.*

304 *"Commission" means the Tobacco Region Revitalization Commission created pursuant to § 3.2-3101.*

305 "Cost," as applied to any project financed under the provisions of this chapter, means the total of all
306 costs incurred by the local government as reasonable and necessary for carrying out all works and
307 undertakings necessary or incident to the accomplishment of any project. It includes, without limitation,
308 all necessary developmental, planning, and feasibility studies, surveys, plans, and specifications;
309 architectural, engineering, financial, legal, or other special services; the cost of acquisition of land and
310 any buildings and improvements thereon, including the discharge of any obligations of the sellers of
311 such land, buildings, or improvements; site preparation and development, including demolition or
312 removal of existing structures; construction and reconstruction; labor; materials, machinery, and
313 equipment; the reasonable costs of financing incurred by the local government in the course of the
314 development of the project; carrying charges incurred before the project is placed in service; interest on
315 funds borrowed to finance the project to a date subsequent to the estimated date the project is to be
316 placed in service; necessary expenses incurred in connection with placing the project in service; the
317 funding of accounts and reserves that the Authority may require; and the cost of other items that the
318 Authority determines to be reasonable and necessary.

319 "Endowment" means the Tobacco Indemnification and Community Revitalization Endowment as
320 established in § 3.2-3104.

321 "Fund" means the Virginia Tobacco Region Revolving Fund created by this chapter.

322 "Local government" means any county, city, town, municipal corporation, authority, district,
323 commission, or political subdivision created by the General Assembly or pursuant to the Constitution or
324 laws of the Commonwealth or any combination of any two or more of the foregoing.

325 "Project" means the same as that term is defined in § 62.1-199.

326 **§ 3.2-3113. Creation and management of Virginia Tobacco Region Revolving Fund.**

327 A. There shall be set apart as a permanent and perpetual fund, to be known as the Virginia Tobacco
328 Region Revolving Fund, with a sum of up to \$50 million made available from (i) the Endowment, (ii)
329 sums, if any, appropriated to the Fund by the General Assembly, (iii) all receipts by the Fund from
330 loans made by it to local governments, (iv) all income from the investment of moneys held in the Fund,
331 and (v) any other sums designated for deposit to the Fund from any source public or private, including,
332 without limitation, any federal grants, awards, or other forms of assistance received by the
333 Commonwealth that are eligible for deposit therein under federal law.

334 B. The Authority shall administer and manage the Fund and establish the interest rates and
335 repayment terms of such loans as are provided for by this chapter in accordance with a memorandum of
336 agreement with the Commission. In order to carry out the administration and management of the Fund,
337 the Authority, in consultation with the Commission, is granted the power to employ officers, employees,
338 agents, advisers, and consultants, including, without limitation, attorneys, financial advisers, engineers
339 and other technical advisers, and public accountants, and the provisions of any other law to the
340 contrary notwithstanding, to determine their duties and compensation without the approval of any other
341 agency or instrumentality. The Authority may disburse from the Fund the reasonable costs and expenses
342 it incurs in the administration and management of the Fund and a reasonable fee to be approved by the
343 Commission for its management services, but the Authority shall not charge its ordinary expenses to the
344 Fund or the Commission. The Department of Treasury, as the party holding the taxable portion of the
345 Endowment, shall be a party to the memorandum of agreement. Under all circumstances, the
346 Commission shall select the projects eligible for the loans.

347 C. The Commission shall direct the distribution of loans from the Fund to particular local
348 governments. Consistent with this chapter, the Commission shall, after consultation with all interested
349 parties, develop a guidance document governing project eligibility and project priority criteria.

350 **§ 3.2-3114. Deposit of money; expenditures; investments.**

351 A. All money belonging to the Fund shall be deposited in an account or accounts in banks or trust
352 companies organized under the laws of the Commonwealth, national banking associations located in the
353 Commonwealth, or savings institutions located in the Commonwealth and organized under the laws of
354 the Commonwealth or the United States. The money in these accounts shall be paid by check signed by
355 the Executive Director of the Authority or another officer or employee designated by the Board of
356 Directors of the Authority. All deposits of money shall, if required by the Authority, be secured in a
357 manner determined by the Authority to be prudent, and all banks, trust companies, and savings
358 institutions are authorized to give security for the deposits.

359 B. Money in the Fund shall not be commingled with other money of the Authority. Money in the
360 Fund not needed for immediate use or disbursement may be invested or reinvested by the Authority in
361 obligations or securities that are considered lawful investments for public funds under the laws of the
362 Commonwealth.

363 **§ 3.2-3115. Collection of money due the Fund.**

364 The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to
365 the Fund under any loan to a local government, including, if appropriate, by taking the action required
366 by § 15.2-2659 or 62.1-216.1 to obtain payment of any amounts in default. Proceedings to recover

367 amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate
368 circuit court.

369 **§ 3.2-3116. Loans to local governments.**

370 A. Except as otherwise provided in this chapter, money in the Fund shall be used solely to make
371 loans to local governments to finance or refinance the cost of any project that has an identifiable
372 revenue stream from which the loan proceeds may be repaid. The local government to which a loan is
373 to be made, the purpose of the loan, the amount of the loan, and the associated identifiable revenue
374 stream shall be designated in writing by the Commission to the Authority following consultation with the
375 Authority. No loan from the Fund shall exceed the total cost of the project to be financed or the
376 outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses.

377 B. Except as otherwise provided in this chapter, the Authority shall determine the interest rate and
378 terms and conditions of any loan from the Fund, which may vary between local governments. Each loan
379 shall be evidenced by appropriate bonds or notes of the local government payable to the Fund. The
380 bonds or notes shall have been duly authorized by the local government and executed by its authorized
381 legal representatives. The Authority is authorized to require in connection with any loan from the Fund
382 such documents, instruments, certificates, legal opinions, and other information as it may deem
383 necessary or convenient.

384 C. In addition to any other terms or conditions that the Authority may establish, the Authority may
385 require, as a condition to making any loan from the Fund, that the local government receiving the loan
386 covenant to perform any of the following:

387 1. Establish and collect rents, rates, fees, and charges to produce revenue sufficient to pay all or a
388 specified portion of (i) the costs of operation, maintenance, replacement, renewal, and repairs of the
389 project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the
390 principal of, premium, if any, and interest on the loan from the Fund to the local government; and (iii)
391 any amounts necessary to create and maintain any required reserve, including any rate stabilization
392 fund deemed necessary or appropriate by the Authority to offset the need, in whole or in part, for future
393 increases in rents, rates, fees, or charges.

394 2. Create and maintain a special fund or funds for the payment of the principal of, premium, if any,
395 and interest on the loan from the Fund to the local government and any other amounts becoming due
396 under any agreement entered into in connection with the loan, or for the operation, maintenance, repair,
397 or replacement of the project or any portions thereof or other property of the local government, and
398 deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due
399 and payable.

400 3. Create and maintain other special funds as required by the Authority.

401 4. Perform other acts otherwise permitted by applicable law to secure payment of the principal of,
402 premium, if any, and interest on the loan from the Fund to the local government and to provide for the
403 remedies of the Fund in the event of any default by the local government in the payment of the loan,
404 including, without limitation, any of the following:

405 a. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security,
406 liquidity arrangements, or credit supports for the loan from any source, public or private, and the
407 payment therefor of premiums, fees, or other charges;

408 b. The combination of one or more projects, or the combination of one or more projects with one or
409 more other undertakings, facilities, utilities, or systems, for the purpose of operations and financing, and
410 the pledging of the revenues from such combined projects, undertakings, facilities, utilities, and systems
411 to secure the loan from the Fund to the local government made in connection with such combination or
412 any part or parts thereof;

413 c. The maintenance, replacement, renewal, and repair of the project; and

414 d. The procurement of casualty and liability insurance.

415 5. Obtain a review of the accounting and the internal controls from the Auditor of Public Accounts
416 or his legally authorized representative. The Authority may request additional reviews at any time
417 during the term of the loan. In addition, anyone receiving a report in accordance with § 3.2-3109 may
418 request an additional review as set forth in this section.

419 D. Any local government borrowing money from the Fund is authorized to perform any acts, take
420 any actions, adopt any proceedings, and make and carry out any contracts that are contemplated by this
421 chapter. Such contracts need not be identical among all local governments but may be structured as
422 determined by the Authority according to the needs of the contracting local government and the Fund.

423 E. Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the
424 Authority may consent to and approve any modification in the terms of any loan to any local
425 government.

426 **§ 3.2-3117. Pledge of loans to secure bonds of the Authority.**

427 A. The Authority is empowered at any time and from time to time to pledge, assign, or transfer from

428 *the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to*
 429 *be held in trust as security for the payment of the principal of, premium, if any, and interest on any or*
 430 *all of the bonds, as defined in § 62.1-199, issued to finance any project. The interests of the Fund in*
 431 *any assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment,*
 432 *or transfer.*

433 *B. To the extent funds are not available from other sources pledged for such purpose, any of the*
 434 *assets or payments of principal and interest received on the assets pledged, assigned, or transferred or*
 435 *held in trust may be applied by the trustee thereof to the payment of the principal of, premium, if any,*
 436 *and interest on such bonds of the Authority secured thereby, and, if such payments are insufficient for*
 437 *such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from*
 438 *the sale to the payment of the principal of, premium, if any, and interest on such bonds of the Authority.*

439 *C. Any assets of the Fund pledged, assigned, or transferred in trust as set forth in this section and*
 440 *any payments of principal, interest, or earnings received thereon shall remain part of the Fund but shall*
 441 *be subject to the pledge, assignment, or transfer to secure the bonds of the Authority and shall be held*
 442 *by the trustee to which they are pledged, assigned, or transferred until no longer required for such*
 443 *purpose by the terms of the pledge, assignment, or transfer.*

444 **§ 3.2-3118. Sale of loans.**

445 *The Authority is empowered at any time and from time to time to sell, upon such terms and*
 446 *conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to this*
 447 *chapter. The net proceeds of sale remaining after the payment of the costs and expenses of the sale*
 448 *shall be designated for deposit to, and become part of, the Fund.*

449 **§ 3.2-3119. Powers of the Authority.**

450 *The Authority is authorized to do any act necessary or convenient to the exercise of the powers*
 451 *granted in this chapter or reasonably implied thereby.*

452 **§ 3.2-3120. Report to the General Assembly and the Governor.**

453 *The Commission, in conjunction with the Authority, shall report annually to the General Assembly*
 454 *and the Governor on all loans made from the Fund.*

455 **§ 3.2-3121. Liberal construction of chapter.**

456 *The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may*
 457 *be effectuated. Insofar as the provisions of this chapter are inconsistent with the provisions of any other*
 458 *law, general, special, or local, the provisions of this chapter shall be controlling.*

459 **§ 62.1-203. Powers of Authority.**

460 *The Authority is granted all powers necessary or appropriate to carry out and to effectuate its*
 461 *purposes, including the following:*

462 *1. To have perpetual succession as a public body corporate and as a political subdivision of the*
 463 *Commonwealth;*

464 *2. To adopt, amend and repeal bylaws, and rules and regulations, not inconsistent with this chapter*
 465 *for the administration and regulation of its affairs and to carry into effect the powers and purposes of*
 466 *the Authority and the conduct of its business;*

467 *3. To sue and be sued in its own name;*

468 *4. To have an official seal and alter it at will although the failure to affix this seal shall not affect*
 469 *the validity of any instrument executed on behalf of the Authority;*

470 *5. To maintain an office at any place within the Commonwealth which it designates;*

471 *6. To make and execute contracts and all other instruments and agreements necessary or convenient*
 472 *for the performance of its duties and the exercise of its powers and functions under this chapter;*

473 *7. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any*
 474 *part of its properties and assets;*

475 *8. To employ officers, employees, agents, advisers and consultants, including without limitations,*
 476 *attorneys, financial advisers, engineers and other technical advisers and public accountants and, the*
 477 *provisions of any other law to the contrary notwithstanding, to determine their duties and compensation*
 478 *without the approval of any other agency or instrumentality;*

479 *9. To procure insurance, in amounts and from insurers of its choice, or provide self-insurance,*
 480 *against any loss, cost, or expense in connection with its property, assets or activities, including insurance*
 481 *or self-insurance against liability for its acts or the acts of its directors, employees or agents and for the*
 482 *indemnification of the members of its Board of Directors and its employees and agents;*

483 *10. To procure credit enhancements from any public or private entities, including any department,*
 484 *agency or instrumentality of the United States of America or the Commonwealth, for the payment of*
 485 *any bonds issued by the Authority, including the power to pay premiums or fees on any such credit*
 486 *enhancements;*

487 *11. To receive and accept from any source aid, grants and contributions of money, property, labor or*
 488 *other things of value to be held, used and applied to carry out the purposes of this chapter subject to the*
 489 *conditions upon which the aid, grants or contributions are made;*

490 12. To enter into agreements with any department, agency or instrumentality of the United States of
491 America or, the Commonwealth, the District of Columbia or any adjoining state for the purpose of
492 planning, regulating and providing for the financing of any projects;

493 13. To collect, or to authorize the trustee under any trust indenture securing any bonds or any other
494 fiduciary to collect, amounts due under any local obligations owned or credit enhanced by the Authority,
495 including taking the action required by § 15.2-2659 or 62.1-216.1 to obtain payment of any unpaid
496 sums;

497 14. To enter into contracts or agreements for the servicing and processing of local obligations owned
498 by the Authority;

499 15. To invest or reinvest its funds as provided in this chapter or permitted by applicable law;

500 16. Unless restricted under any agreement with holders of bonds, to consent to any modification with
501 respect to the rate of interest, time and payment of any installment of principal or interest, or any other
502 term of any local obligations owned by the Authority;

503 17. To establish and revise, amend and repeal, and to charge and collect, fees and charges in
504 connection with any activities or services of the Authority;

505 18. To do any act necessary or convenient to the exercise of the powers granted or reasonably
506 implied by this chapter; and

507 19. To pledge as security for the payment of any or all bonds of the Authority, all or any part of the
508 Capital Reserve Fund or other reserve fund or account transferred to a trustee for such purpose from the
509 Water Facilities Revolving Fund pursuant to § 62.1-231, from the Water Supply Revolving Fund
510 pursuant to § 62.1-240, from the Virginia Solid Waste or Recycling Revolving Fund pursuant to
511 § 62.1-241.9, from the Virginia Airports Revolving Fund pursuant to § 5.1-30.6, ~~or~~ from the Dam
512 Safety, Flood Prevention and Protection Assistance Fund pursuant to § 10.1-603.17, *or from the Virginia
513 Tobacco Region Revolving Fund pursuant to § 3.2-3117.*

514 **2. That the six Commission members serving as of July 1, 2015 whose seats are eliminated by the**
515 **reduction in the size of the Commission may serve the remainder of their unexpired terms.**