Legislative Analysis

Mitchell Bean, Director
Phone: (517) 373-8080
http://www.house.mi.gov/hfa

TOBACCO SETTLEMENT FINANCE AUTHORITY ACT

House Bill 5048 as passed by the House
Sponsor: Rep. Bill Huizenga
Committee: Commerce

Complete to 10-12-05

A SUMMARY OF HOUSE BILL 5048 AS PASSED BY THE HOUSE

The bill would create the Michigan Tobacco Settlement Finance Authority Act under which the State Budget Director, with the approval of the State Administrative Board, would be authorized to sell to the Tobacco Settlement Finance Authority all or a portion of the state's tobacco settlement receipts. The sale agreement or combined sale agreements would have to provide for sales sufficient to provide net proceeds to the state of $1 billion, which would be deposited to and held, used, and expended by the State Treasurer as provided in the Michigan Trust Fund Act. The new authority would issue bonds to purchase the tobacco receipts.

[A related bill, House Bill 5109, would amend the Michigan Trust Fund Act to create a new fund, the 21st Century Jobs Trust Fund, which is to consist of net proceeds from the sale of tobacco settlement revenues.]

The following is a brief description of the bill's main provisions.

- A new authority—the Michigan Tobacco Settlement Finance Authority— would be created as a public body corporate and politic within the Department of Treasury. The authority would be treated as a separate legal entity with separate corporate purposes. The assets, liabilities, and funds of the authority could not be consolidated or commingled with those of the state or of any entity capable of being a debtor in a case commenced under the federal bankruptcy code.

- The authority would exercise its duties independently of the state treasurer, although its staffing, budgeting, procurement, and related administrative functions would be performed under the direction and supervision of the state treasurer. The authority could employ or contract for legal, financial, and technical experts, and other employees, as required.

- The authority would be operated by a seven-member board of directors that would include the State Treasurer; the director of the Department of Labor and Economic Growth; three members appointed by the Governor with the advice and consent of the Senate; and two other gubernatorial appointees, with one appointed from a list of two or more selected by the Speaker of the House of Representatives and one from a list of two or more selected by the Senate Majority Leader. The gubernatorial appointments would be required to have knowledge, skill, or experience in business and financial fields. The State Treasurer would serve as the chair of the board.

- The authority would be authorized from time to time to issue bonds to purchase the state's tobacco receipts. Generally speaking, every issue of bonds would be special revenue obligations payable from and secured by a pledge of encumbered tobacco revenues and other assets. The authority could sell the bonds in the manner determined by the authority board, both at public and private sale, and on either a competitive or negotiated basis. Proceeds would be disbursed to the State Treasurer. Bonds would not be subject to the Revised Municipal Finance Act but would be subject to the Agency Financing Reporting Act.

- The approval of a sale agreement by the State Administrative Board would be made by adopting a resolution and that approval together with the subsequent sale agreement would be conclusively presumed to be valid for all purposes unless challenged in an action brought in the Michigan Court of Appeals within 30 days after the adoption of the resolution. All challenges would have to be heard and determined as expeditiously as possible with lawful precedence over other matters.

- The transferred tobacco settlement receipts would be referred to as TSRs, and on and after the effective date of each sale of TSRs, the state would have no right, title, or interest in or to the TSRs sold; instead the TSRs sold would be the property of the authority.

- The bonds (and any "ancillary facilities") would not be a debt or liability of the state or any agency or instrumentality of the state (other than the authority), and the act could not be construed to authorize the authority to incur any indebtedness on behalf of the state or obligate the state or its political subdivisions. The bonds or ancillary facilities would have to contain a statement of this limitation on their face in bold typeface. ("Ancillary facilities" include such things as revolving credit agreements, reimbursement agreements, interest rate exchanges, and various hedging and security arrangements entered into to facilitate the issuance, sale, or purchase of bonds or the making or performance of swap contracts, or to attempt to hedge risk or achieve a desirable effective interest rate or cash flow.)

- The bill contains extensive provisions regarding the nature and issuance of the authority bonds that resemble provisions in other laws governing bond-issuing authorities, such as the Michigan State Housing Development Authority (MSHDA).

- The board would have to rotate bond counsel when issuing bonds. The board would have to authorize and issue bonds so that at least three financial institutions or brokerage firms are involved in marketing and underwriting the bonds. At least one of the three financial institutions or brokerage firms would have to be Michigan based. A single financial institution or brokerage firm could not market or underwrite more than 40 percent of the bonds issued under the act.

- The property of the authority and its income and operation would be exempt from taxation by the state or any of its political subdivisions.

- The authority would be required to submit an annual report on its activities no later than March 1 to the Governor, Speaker and Minority Leader of the House of Representatives, and the Majority Leader and Minority Leader of the Senate.

- The bill would appropriate $1 million from the General Fund to the authority for the fiscal year ending September 30, 2006 for the payment of operating expenses and the funding of any reserve requirements. Money not spent would not revert to the General Fund but would be retained and used by the authority.

- The authority could be dissolved by act of the Legislature on condition that the authority has no debts or obligations outstanding or that provision has been made for the payment or retirement of all debts or obligations. Upon the dissolution, all property, funds, and assets of the authority would be vested in the state.

- The bill contains a statement of findings, which includes among other things the statement that "Selling the state's right to receive tobacco settlement payments for limited periods of years is a prudent method of managing the risks associated with reliance on the receipt of tobacco settlement payments in perpetuity." The bill also contains a determination that, "The creation of the Authority and the carrying out of its authorized purposes is in all respects a public and governmental purpose for the benefit of the people of this state and for the improvement of their health, safety, welfare, comfort, and security, and that these purposes are public purposes and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this act."

- The bill is tie-barred to House Bill 5047 and Senate Bill 533, which together propose a number of economic development programs that would rely on the proceeds from the sale of tobacco receipts. It is also tie-barred to House Bills 4972, 4973, 5108, and 5109, and Senate Bill 359. These bills all address either economic development initiatives or business tax and fee restructuring.

FISCAL IMPACT:

This bill provides for the sale of a portion of the state's future tobacco settlement revenue sufficient to provide $1 billion in net proceeds after deducting reserves and issuance costs. Some portion of these tobacco receipts are to be allocated to the economic development activities enumerated in House Bill 5047 and Senate Bill 533. House Bill 5048 itself is silent on the allocation of sale proceeds. The amount of proceeds available from the sale of future tobacco settlement revenue will be depend on the prevailing bond market interest rate for this type of security at the time of sale. If such interest rates rise, the gross proceeds will be reduced.

State expenditures may increase due to the hiring of full time staff to support the Michigan Tobacco Settlement Authority (MTSA) created in this bill, as well as the

Strategic Economic Investment Board (SEIB) created in Senate Bill 533 and potential additional staffing of the Michigan Economic Development Corporation (MEDC) which is implied in House Bill 5047. Additional expenditures will be needed for legal counsel, financial and other consultants, and the reimbursable expenses of the non-compensated members of the MTSA. The amount of such costs cannot be estimated until information regarding the size and composition of full time staff, and the expected annual level of bonding activity, becomes available. It is likely that the MTSA operating expenses will be paid from bond issuance proceeds and earnings from the investment of these proceeds.

Legislative Analyst: Chris Couch
Fiscal Analyst: Richard Child