

HOUSE SUBSTITUTE FOR SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5048

A bill to create the Michigan tobacco settlement finance authority; to create funds and accounts; to provide for the sale by this state and the purchase by the authority of all or a portion of tobacco settlement assets; to authorize the issuing of bonds and notes; to prescribe the powers and duties of the authority, the state administrative board, the state treasurer, and certain other state officials and state employees; and to make appropriations and prescribe certain conditions for the appropriations.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan tobacco settlement finance authority act".

3 Sec. 2. The legislature finds and declares the following:

4 (a) This state has entered into a master settlement agreement

1 with major tobacco companies that should result in the state
2 receiving substantial sums of money in perpetuity assuming no
3 adverse changes in cigarette consumption, market share, financial
4 condition of those tobacco companies, and changes in law.

5 (b) The master settlement agreement is a binding and
6 enforceable agreement of this state.

7 (c) Selling the state's right to receive all or a portion of
8 tobacco settlement payments is a prudent method of managing the
9 risks associated with reliance on the receipt of tobacco settlement
10 payments in perpetuity.

11 (d) Establishing the authority and execution by the authority
12 of its powers granted under this act fulfill in all respects a
13 public and governmental purpose for the benefit of the people of
14 this state.

15 (e) The exchange of net proceeds received by the authority
16 from the issuance of bonds plus residual interests for the right to
17 receive all or a portion of tobacco settlement payments constitutes
18 a true sale for a fair price.

19 Sec. 3. As used in this act:

20 (a) "Ancillary facility" means any revolving credit agreement,
21 agreement establishing a line of credit or letter of credit,
22 reimbursement agreement, interest rate exchange or similar
23 agreement, currency exchange agreement, interest rate floor or cap,
24 options, puts or calls to hedge payment, currency, rate, spread or
25 similar exposure, or similar agreements, investment agreements,
26 float agreements, forward agreements or other investment
27 arrangements, insurance contract, surety bond, commitment to

1 purchase or sell securities, purchase or sale agreements or
2 commitments or other contracts or agreements and other security
3 agreements approved by the authority, including without limitation
4 any arrangements referred to in this act.

5 (b) "Authority" means the Michigan tobacco settlement finance
6 authority created under section 4.

7 (c) "Benefited parties" means persons, firms, or corporations
8 that enter into ancillary facilities with the authority according
9 to the provisions of this act.

10 (d) "Board" means the board of directors of the authority.

11 (e) "Bond" means a bond, note, or other obligation issued by
12 the authority under this act.

13 (f) "Code" means the United States internal revenue code of
14 1986, as amended, and any successor provision of law.

15 (g) "Encumbered tobacco revenues" means that portion of the
16 TSRs that is pledged by the authority to the repayment of any bonds
17 under the terms of the applicable authority resolution, trust
18 agreement, or trust indenture.

19 (h) "Federal bankruptcy code" means the federal bankruptcy
20 code, 11 USC 101 to 1330.

21 (i) "Financial institution" means a state or nationally
22 chartered bank or a state or federally chartered savings and loan
23 association, savings bank, or credit union whose deposits are
24 insured by an agency of the United States government and that
25 maintains a principal office or branch office in this state under
26 the laws of this state or the United States.

27 (j) "Financing costs" means all capitalized interest,

1 operating and debt service reserves, costs of issuance, fees for
2 credit and liquidity enhancements, any item of expense directly or
3 indirectly payable or reimbursable by the authority and related to
4 the authorization, sale, or issuance of bonds, including without
5 limitation underwriting fees, counsel fees, fees of the attorney
6 general and fees and expenses of consultants and fiduciaries, and
7 other costs as the authority determines to be desirable in issuing,
8 securing, and marketing the bonds.

9 (k) "Interest rate exchange or similar agreement" means a
10 written contract with a counterparty to provide for an exchange of
11 payments based upon fixed or variable interest rates, or both fixed
12 and variable interest rates.

13 (l) "Master settlement agreement" means the settlement
14 agreement and related documents entered into on November 23, 1998,
15 and incorporated into a consent decree and final judgment entered
16 into on December 7, 1998, in Kelley Ex Rel. Michigan v Phillip
17 Morris Incorporated, et al., Ingham county circuit court, docket
18 no. 96-84281CZ.

19 (m) "Net proceeds" means the amount of proceeds remaining
20 following each sale of bonds which are not required by the
21 authority to establish and fund reserve or escrow funds or
22 termination or settlement payments under ancillary facilities and
23 to provide the financing costs and other expenses and fees directly
24 related to the authorization and issuance of bonds.

25 (n) "Operating expenses" means the reasonable operating
26 expenses of the authority, including without limitation the cost of
27 preparation of accounting and other reports, costs of maintenance

1 of the ratings on the bonds, insurance premiums, and costs of
2 authority meetings or other required activities of the authority,
3 counsel fees, including the fees of the attorney general, and fees
4 and expenses incurred for consultants and fiduciaries and any other
5 costs described in section 4(12).

6 (o) "Outstanding" means, when used with respect to bonds, all
7 bonds other than bonds that shall have been paid in full at
8 maturity or that may be considered not outstanding under the
9 applicable authority resolution, trust indenture or trust agreement
10 authorizing the issuance of the bonds and when used with respect to
11 ancillary facilities, all ancillary facilities other than ancillary
12 facilities that have been paid in full or that may be considered
13 not outstanding under such ancillary facilities.

14 (p) "Person" means an individual, corporation, limited or
15 general partnership, association, joint venture, limited liability
16 company, or a governmental entity, including this state.

17 (q) "Qualifying statute" means that term as defined in the
18 master settlement agreement, which is 1999 PA 244, MCL 445.2051 to
19 445.2052.

20 (r) "Residual interests" means 1 or more of the following as
21 provided in any sale agreement:

22 (i) The unencumbered tobacco revenues.

23 (ii) The net proceeds not previously paid to this state.

24 (iii) The income of the authority that is in excess of the
25 authority's requirements to pay its operating expenses, debt
26 service, sinking fund requirements, reserve fund or escrow fund
27 requirements, and any other contractual obligations to the owners

1 of the bonds or benefited parties, or that may be incurred in
2 connection with the issuance or repayment of the bonds or the
3 execution or repayment of ancillary facilities.

4 (iv) Contractual rights, if any, as shall be provided to this
5 state in accordance with the terms of any sale agreements.

6 (s) "Sale agreement" means any agreement authorized under this
7 act in which this state provides for the sale of all or a portion
8 of the state's tobacco receipts under section 8.

9 (t) "State treasurer" means the state treasurer of this state
10 or his or her designee who shall be designated by a written
11 instrument signed by the state treasurer and maintained in a
12 permanent file and whose signature shall have the same force and
13 effect as the signature of the state treasurer for all purposes
14 under this act.

15 (u) "State's tobacco receipts" means:

16 (i) All tobacco settlement revenue that is received by this
17 state that is required to be made, under the terms of the master
18 settlement agreement, by tobacco manufacturers to this state.

19 (ii) This state's rights to receive the tobacco settlement
20 revenue under the master settlement agreement.

21 (v) "TSRs" means the portion, which may include any or all, of
22 this state's tobacco receipts sold to the authority under this act
23 and any sale agreement.

24 (w) "Unencumbered tobacco revenues" means that portion of the
25 TSRs that are not encumbered tobacco revenues.

26 (x) "Uniform commercial code" means the uniform commercial
27 code, 1962 PA 174, MCL 440.1101 to 440.11102.

1 Sec. 4. (1) The Michigan tobacco settlement finance authority
2 is created as a public body corporate and politic within the
3 department of treasury. The authority is a state institution
4 within the meaning of section 9 of article II of the state
5 constitution of 1963 and an instrumentality of this state
6 exercising public and essential governmental functions. The
7 exercise by the authority of the powers conferred by this act is an
8 essential governmental function of this state.

9 (2) Notwithstanding the existence of common management, the
10 authority shall be treated and accounted for as a separate legal
11 entity with its separate corporate purposes as set forth in this
12 act. The assets, liabilities, and funds of the authority shall not
13 be consolidated or commingled with those of this state or of any
14 entity capable of being a debtor in a case commenced under the
15 federal bankruptcy code.

16 (3) The authority shall have power and is hereby authorized
17 from time to time to issue bonds in the principal amount or amounts
18 and with the maturities as the authority shall determine to be
19 necessary to provide sufficient funds for achieving its authorized
20 purposes, consisting of the purchase of all or a portion of the
21 state's tobacco receipts under this act and the payment of or
22 provision for financing costs.

23 (4) The board of the authority shall authorize the issuance of
24 bonds by resolution. The authority may issue bonds, including
25 refunding bonds, without obtaining the consent of any department,
26 division, commission, board, bureau, or agency of this state and
27 without any other proceedings or the occurrence of any other

1 conditions other than those proceedings, conditions, or things that
2 are specifically required by this act. Every issue of bonds shall
3 be special revenue obligations payable from and secured by a pledge
4 of encumbered tobacco revenues and other assets, including without
5 limitation the proceeds of the bonds deposited in a reserve fund
6 for the benefit of the owners of the bonds, earnings on funds of
7 the authority and other funds as may become available, upon the
8 terms and conditions as specified by the authority in the authority
9 resolution under which the bonds are issued or in a related trust
10 agreement or trust indenture.

11 (5) The authority may issue bonds to refund any bonds by the
12 issuance of new bonds, whenever it considers the refunding
13 expedient, whether the bonds to be refunded have or have not
14 matured, and to issue bonds partly to refund bonds then outstanding
15 and partly for restructuring or any of its other authorized
16 purposes.

17 (6) For each issue of bonds, the authority shall determine all
18 of the following:

19 (a) The date of issuance.

20 (b) Whether the bonds shall bear no interest, appreciate as to
21 principal amount, bear interest at fixed or variable rates, or any
22 combination of these.

23 (c) Whether the bonds shall be payable at or prior to
24 maturity.

25 (d) When the bonds shall mature.

26 (e) Whether the authority may redeem the bonds prior to
27 maturity, at what price, and under what conditions.

1 (f) The method of payment of principal of and interest on the
2 bonds.

3 (g) The form, denominations, and places of payment of
4 principal of and interest on the bonds.

5 (h) If any officer whose signature or the facsimile of whose
6 signature appears on any bond shall cease to be that officer before
7 the delivery of the bond, that signature or facsimile shall
8 nevertheless be valid and sufficient for all purposes as if he or
9 she had remained in office until delivery of the bond.

10 (i) Any other terms and conditions necessary to issue the
11 bonds in fully marketable form.

12 (7) The authority may sell the bonds in the manner determined
13 by the authority board, at public or private sale, and on either a
14 competitive or negotiated basis. The authority shall disburse the
15 net proceeds of the bonds to the state treasurer as provided in
16 section 8.

17 (8) This act shall govern the creation, perfection, priority,
18 and enforcement of any pledge of revenues or other security made by
19 the authority. Each pledge made by the authority shall be valid and
20 binding at the time the pledge is made. The encumbered tobacco
21 revenues, reserves, or earnings pledged or earnings on the
22 investment of the encumbered tobacco revenues, reserves, or
23 earnings pledged shall immediately be subject to the lien of the
24 pledge without any physical delivery or further act and the lien on
25 that pledge shall be valid and binding as against all parties
26 having claims of any kind in tort, contract or otherwise against
27 the authority, irrespective of whether the parties have notice of

1 the lien or pledge, and without filing or recording the pledge. The
2 resolution or other instrument by which a pledge is created does
3 not have to be recorded.

4 (9) This act shall also govern the negotiability of bonds
5 issued under this act. Any bonds issued under this act shall be
6 fully negotiable within the meaning and for all purposes of the
7 uniform commercial code. By accepting the bond or obligation, each
8 owner of a bond or other obligation of the authority shall be
9 conclusively considered to have agreed that the bond is and shall
10 be fully negotiable within the meaning and for all purposes of the
11 uniform commercial code.

12 (10) In the discretion of the authority, any bonds and any
13 ancillary facilities may be secured by a trust agreement or trust
14 indenture by and between the authority and a trustee, which may be
15 any trust company or bank having the powers of a trust company,
16 whether located within or without this state. A trust agreement or
17 trust indenture authorized under this subsection, or an authority
18 resolution providing for the issuance of bonds may provide for the
19 creation and maintenance of reserves as the authority shall
20 determine to be proper and may include covenants setting forth the
21 duties of the authority in relation to the bonds, the ancillary
22 facilities, the income to the authority, the sale agreement, the
23 encumbered tobacco revenues and residual interests. A trust
24 agreement or trust indenture authorized under this subsection or an
25 authority resolution may contain provisions respecting the custody,
26 safeguarding, and application of all money and bonds and may
27 contain provisions for protecting and enforcing the rights and

1 remedies under the sale agreement of the owners of the bonds and
2 benefited parties as may be reasonable and proper and not in
3 violation of law. It shall be lawful for any bank or trust company
4 incorporated under the laws of this state that may act as
5 depository of the proceeds of bonds or of any other funds or
6 obligations received on behalf of the authority to furnish
7 indemnifying bonds or to pledge obligations as may be required by
8 the authority. Any trust agreement or trust indenture authorized
9 under this subsection or an authority resolution may contain other
10 provisions as the authority may consider reasonable and proper for
11 priorities and subordination among the owners of bonds and
12 benefited parties.

13 (11) The authority may enter into, amend, or terminate, as it
14 determines to be necessary or appropriate, any ancillary facilities
15 for any of the following purposes:

16 (a) To facilitate the issuance, sale, resale, purchase,
17 repurchase, or payment of bonds, or the making or performance of
18 swap contracts, including without limitation bond insurance,
19 letters of credit, and liquidity facilities.

20 (b) To attempt to hedge risk or achieve a desirable effective
21 interest rate or cash flow.

22 (12) The authority may enter into, amend, or terminate any
23 ancillary facility as it determines to be necessary or appropriate
24 to place the obligations or investments of the authority, as
25 represented by the bonds or the investment of their proceeds, in
26 whole or in part, on the interest rate, cash flow, or other basis
27 desired by the authority, which facility may include without

1 limitation contracts commonly known as interest rate swap
2 agreements, and futures or contracts providing for payments based
3 on levels of, or changes in, interest rates. The authority may
4 enter into these contracts or arrangements in connection with, or
5 incidental to, entering into, or maintaining any agreement that
6 secures bonds of the authority or any investment, or contract
7 providing for investments, of reserves or similar facility
8 guaranteeing an investment rate for a period of years.

9 (13) The determination by the authority that an ancillary
10 facility or the amendment or termination of an ancillary facility
11 is necessary or appropriate is conclusive. The authority may
12 determine the terms and conditions of an ancillary facility,
13 including without limitation provisions as to security, default,
14 termination, payments, remedy, and consent to service of process.

15 (14) Bonds and ancillary facilities may contain a recital that
16 they are issued pursuant to this act, which recital is conclusive
17 evidence of the validity of the bonds and any ancillary facility
18 and the regularity of the proceedings relating to the bonds and
19 ancillary facilities.

20 (15) A member of the board or an officer, appointee, or
21 employee of the authority shall not be subject to personal
22 liability when acting in good faith within the scope of his or her
23 authority or on account of liability of the authority. The board
24 may defend and indemnify a member of the board or an officer,
25 appointee, or employee of the authority against liability arising
26 out of the discharge of his or her official duties. The authority
27 may indemnify and procure insurance indemnifying members of the

1 board and other officers and employees of the authority from
2 personal loss or accountability for liability asserted by a person
3 with regard to bonds or other obligations of the authority, or from
4 any personal liability or accountability by reason of the issuance
5 of the bonds or other obligations or by reason of any other action
6 taken or the failure to act by the authority. The authority may
7 also purchase and maintain insurance on behalf of any person
8 against the liability asserted against the person and incurred by
9 the person in any capacity or arising out of the status of the
10 person as a member of the board or an officer or employee of the
11 authority, whether or not the authority would have the power to
12 indemnify the person against that liability under this subsection.

13 (16) A member, officer, employee or agent of the authority
14 shall not have an interest, either directly or indirectly, in any
15 business organization engaged in any business, contract or
16 transaction with the authority or in any contract of any other
17 person engaged in any business with the authority, or in the
18 purchase, sale, lease or transfer of any property to or from the
19 authority.

20 (17) Bonds issued under this act are not subject to the
21 revised municipal finance act, 2001 PA 34, MCL 141.2101 to
22 141.2821.

23 (18) The issuance of bonds under this act is subject to the
24 agency financing reporting act, 2002 PA 470, MCL 129.171 to
25 129.177.

26 (19) A resolution of the authority authorizing bonds, or the
27 provisions of a trust agreement or trust indenture authorized by

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1 resolution of the authority, may delegate to an officer or other
2 employee of the authority, or an agent designated by the authority,
3 for the period of time as the authority determines, the power to
4 cause the issue, sale, and delivery of the bonds within limits on
5 those bonds established by the authority as to any of the
6 following:

7 (a) The form.

8 (b) The maximum interest rate or rates.

9 (c) The maturity date or dates.

10 (d) The purchase price.

11 (e) The denominations.

12 (f) The redemption premiums.

13 (g) The nature of the security.

14 (h) The selection of an applicable interest rate index.

15 (i) Other terms and conditions with respect to the issuance of
16 the bonds as the authority shall prescribe.

17 (20) The board shall rotate bond counsel when issuing bonds
18 under this act. [The board shall authorize and issue bonds in a manner
19 that provides that not less than 2 financial institutions or brokerage
20 firms are involved in marketing and underwriting the bonds. Not less than
21 1 of the 2 financial institutions or brokerage firms described in this
22 subsection shall meet all of the following:

23 (a) Be chartered in this state.

(b) Have 1/3 or more of its branch offices located in this state.

(c) Have 25% or more of its employees located in this state.]
24 Sec. 5. The authority shall exercise its duties independently

25 of the state treasurer. The staffing, budgeting, procurement, and
26 related administrative functions of the authority shall be
27 performed under the direction and supervision of the state

1 treasurer.

2 Sec. 6. (1) The authority shall exercise its duties through
3 its board of directors.

4 (2) The board shall be made up of 7 members as follows:

5 (a) The state treasurer.

6 (b) The director of the department of labor and economic
7 growth.

8 (c) Three members with knowledge, skill, or experience in the
9 business or financial fields appointed by the governor with the
10 advice and consent of the senate.

11 (d) One member appointed by the governor from a list of 2 or
12 more individuals selected by the majority leader of the senate,
13 with knowledge, skill, or experience in the business or financial
14 fields.

15 (e) One member appointed by the governor from a list of 2 or
16 more individuals selected by the speaker of the house of
17 representatives, with knowledge, skill, or experience in the
18 business or financial fields.

19 (3) The appointed members shall serve for terms of 4 years.
20 Of the 3 members first appointed, 1 shall be appointed for an
21 initial term of 1 year, 1 shall be appointed for an initial term of
22 2 years, and 1 shall be appointed for an initial term of 3 years.
23 The appointed members shall serve until a successor is appointed.
24 A vacancy shall be filled for the balance of the unexpired term in
25 the same manner as the original appointment.

26 (4) The chief executive officer or director of any state
27 department or agency who is a designated member of the board may

1 appoint a representative to serve in his or her absence.

2 (5) Members of the board shall serve without compensation but
3 may receive reasonable reimbursement for necessary travel and
4 expenses incurred in the discharge of their duties.

5 (6) The state treasurer shall serve as chairperson of the
6 board.

7 (7) A majority of the appointed and serving members of the
8 board shall constitute a quorum of the board for the transaction of
9 business. A member may participate in a meeting by the use of
10 amplified telephonic or video conferencing equipment. A member
11 participating by the use of video conferencing equipment shall be
12 considered to be present for purposes of a quorum and for purposes
13 of voting. Actions of the board shall be approved by a majority
14 vote of the members present at a meeting.

15 (8) The authority may employ or contract for legal, financial,
16 and technical experts, and other officers, agents, and employees,
17 permanent and temporary, as the authority requires, and shall
18 determine their qualifications, duties, and compensation. The
19 board may delegate to 1 or more agents or employees those powers or
20 duties with the limitations as the board considers proper.

21 (9) The members of the board and officers and employees of the
22 authority are subject to 1968 PA 317, MCL 15.321 to 15.330, or 1968
23 PA 318, MCL 15.301 to 15.310.

24 (10) A member of the board or officer, employee, or agent of
25 the authority shall discharge the duties of his or her position in
26 a nonpartisan manner, with good faith, and with that degree of
27 diligence, care, and skill that an ordinarily prudent person would

1 exercise under similar circumstances in a like position. In
2 discharging the duties, a member of the board or an officer,
3 employee, or agent, when acting in good faith, may rely upon the
4 opinion of counsel for the authority, upon the report of an
5 independent appraiser selected with reasonable care by the board,
6 or upon financial statements of the authority represented to the
7 member of the board or officer, employee, or agent of the authority
8 to be correct by the president or the officer of the authority
9 having charge of its books or account, or stated in a written
10 report by a certified public accountant or firm of certified public
11 accountants fairly to reflect the financial condition of the
12 authority.

13 (11) The board shall hire an independent public financial
14 advisor to provide financial and investment advice regarding the
15 authorization and issuance of bonds and other investment
16 responsibilities of the board under this act. The duties of the
17 independent public financial advisor shall include, but are not
18 limited to, assisting the board in evaluating and selecting
19 underwriters, brokerage firms, and other consultants as required to
20 conduct the bond sale, conduct due diligence on prospective
21 underwriters', brokerage firms', and other consultants' experience,
22 history, and demonstrated adherence to ethical standards, and
23 prepare recommendations based upon their due diligence. The
24 independent public financial advisor shall have personal experience
25 in asset-backed financing, have experience and the ability to
26 ascertain the appropriateness of the pricing of the sales of the
27 state's tobacco receipts, and be able to provide the board with

1 independent financial advice. The independent public financial
2 advisor shall not receive a commission, take down, or other
3 remuneration from an underwriter, brokerage firm, or other
4 consultant for the underwriting or sale of bonds that are secured
5 by TSRs.

6 Sec. 7. The authority shall have all of the following powers:

7 (a) To solicit and accept gifts, grants, and loans from any
8 person.

9 (b) To invest any money of the authority at the authority's
10 discretion, in any obligations determined proper by the authority,
11 and name and use depositories for its money.

12 (c) To procure insurance against any loss in connection with
13 the property, assets, or activities of the authority.

14 (d) To sue and be sued, to have a seal, and to make, execute,
15 and deliver contracts, conveyances, and other instruments necessary
16 to the exercise of the authority's powers.

17 (e) To make and amend bylaws.

18 (f) To employ and contract with individuals necessary for the
19 operation of the authority.

20 (g) To make and execute contracts including without limitation
21 sale agreements, trust agreements, trust indentures, bond purchase
22 agreements, tax regulatory agreements, continuing disclosure
23 agreements, ancillary facilities, and all other instruments
24 necessary or convenient for the exercise of its powers and
25 functions, and commence any action to protect or enforce any right
26 conferred upon it by any law, contract or other agreement.

27 (h) To engage the services of financial advisors and experts,

1 legal counsel, placement agents, underwriters, appraisers and other
2 advisors, consultants and fiduciaries as may be necessary to
3 effectuate the purposes of this act.

4 (i) To pay its operating expenses and financing costs.

5 (j) To pledge the TSRs or other assets as security for the
6 payment of the principal of and interest on any bonds and for its
7 obligations under any ancillary facility.

8 (k) To procure insurance, letters of credit, or other credit
9 enhancement with respect to any bonds for the payment of tenders of
10 bonds, or for the payment upon maturity of short-term bonds.

11 (l) To enter into any ancillary facility with any person under
12 the terms and conditions as the authority may determine and to
13 provide insurance, letters of credit, or other credit enhancement
14 with respect to any ancillary facility.

15 (m) To modify, amend, or replace any existing, or enter into a
16 new, ancillary facility.

17 (n) To do any and all things necessary or convenient to carry
18 out its purposes and exercise the powers expressly given and
19 granted in this act.

20 Sec. 8. (1) The state budget director with the approval of the
21 state administrative board may sell to the authority, and the
22 authority may purchase, for cash or other consideration and in 1 or
23 more installments, all or a portion of the state's tobacco receipts
24 pursuant to the terms of 1 or more sale agreements. In the
25 alternative, the state budget director with the approval of the
26 state administrative board may sell all or a portion of the state's
27 tobacco receipts for cash or other consideration to a person or

1 persons other than the authority, if the terms of the sale
2 agreement to sell the state's tobacco receipts are in the best
3 interests of this state and the net proceeds of the sale will not
4 exceed \$400,000,000.00. If the sale to a person or persons other
5 than the authority is in the best interests of this state, the
6 state administrative board shall approve the terms of the sale
7 agreement. The sale agreement or combined sale agreements shall
8 provide for the sale of that portion of the state's tobacco
9 receipts sufficient to provide net proceeds to the state in the
10 amount of \$400,000,000.00, which shall be deposited to and held,
11 used, and expended by the state treasurer in the manner provided
12 for in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to
13 12.256.

14 (2) Any sale agreement shall provide that the purchase price
15 payable by the authority to the state for TSRs shall consist of the
16 net proceeds and the residual interests, if any. In addition, any
17 sale shall be pursuant to 1 or more sale agreements that may
18 contain the terms and conditions considered appropriate by the
19 state budget director to carry out and effectuate the purposes of
20 this section, including without limitation covenants binding this
21 state in favor of the authority and its assignees, including
22 without limitation the owners of the bonds and benefited parties,
23 including a requirement that the state enforce the provisions of
24 the master settlement agreement that require the payment of the
25 TSRs, a requirement that the state enforce the provisions of the
26 qualifying statute, a provision authorizing inclusion of the
27 state's pledge and agreement, as set forth in section 11, in any

1 agreement with owners of the bonds or any benefited parties, and
2 covenants with respect to the application and use of the proceeds
3 of the sale of the state's tobacco receipts to preserve the tax
4 exemption of the interest on any bonds, if issued as tax-exempt.
5 The state budget director in any sale agreement may agree to, and
6 the authority may provide for, the assignment of the authority's
7 right, title, and interest under the sale agreement for the benefit
8 and security of the owners of bonds and benefited parties.

9 (3) A sale agreement may provide that the remedies available
10 to the authority and the bondholders for any breach of the pledges
11 and agreements of this state set forth in subsection (2) shall be
12 limited to injunctive relief and that this state shall be
13 considered to have diligently enforced the qualifying statute if
14 there has been no judicial determination by a court of competent
15 jurisdiction in this state, in an action commenced by a
16 participating tobacco manufacturer under the master settlement
17 agreement, that this state has failed to diligently enforce the
18 qualifying statute.

19 (4) The approval of the state administrative board shall be
20 made by a resolution adopted by the state administrative board and
21 that approval together with the sale agreement made pursuant to
22 that approval shall be conclusively presumed to be valid for all
23 purposes unless challenged in an action brought in the court of
24 appeals within 30 days after the adoption of the resolution. All
25 challenges shall be heard and determined as expeditiously as
26 possible with lawful precedence over other matters. Consideration
27 by the court of appeals shall be based solely on the record before

1 the state administrative board and briefs to the court shall be
2 limited to whether the resolution conforms to the constitution and
3 laws of this state and the United States and is within the
4 authority of the state administrative board under this act.

5 (5) A sale of all or a portion of the state's tobacco receipts
6 to the authority under a sale agreement shall be treated as a true
7 sale and absolute transfer of the state's tobacco receipts
8 transferred and not as a pledge or other security interest for any
9 borrowing. A sale agreement that expressly states that the transfer
10 of all or a portion of the state's tobacco receipts to the
11 authority is a sale or other absolute transfer signifies that the
12 transaction is a true sale and is not a secured transaction and
13 that title, legal and equitable, has passed to the authority. The
14 characterization of a sale as an absolute transfer by the
15 participants shall not be negated or adversely affected by the fact
16 that only a portion of the state's tobacco receipts are
17 transferred, or by the acquisition or retention by this state of a
18 residual interest, or by the participation by any state official as
19 a member or officer of the authority, or by whether the state is
20 responsible for collecting the TSRs or otherwise enforcing the
21 master settlement agreement or retains legal title to the portion
22 of the state's tobacco receipts for the purposes of these
23 collection activities, or by any characterization of the authority
24 or its obligations for purposes of accounting, taxation, or
25 securities regulation, or by any other factor whatsoever. A true
26 sale under this act exists regardless of whether the authority has
27 any recourse against this state, or any other term of the sale

1 agreement, including the fact that this state acts as a collector
2 of the state's tobacco receipts or the treatment of the transfer as
3 a financing for any purpose.

4 (6) On and after the effective date of each sale of TSRs, the
5 state shall have no right, title, or interest in or to the TSRs
6 sold, and the TSRs sold shall be property of the authority and not
7 of this state, and shall be owned, received, held, and disbursed by
8 the authority and not this state. On or before the effective date
9 of a sale described in this subsection, this state through the
10 state treasurer shall notify the escrow agent under the master
11 settlement agreement that this state has sold all or a portion of
12 the state's tobacco receipts to the authority, including, if
13 applicable, a statement as to the percentage sold and shall
14 irrevocably instruct the escrow agent that, subsequent to the date
15 specified in the notice, that portion of the state's tobacco
16 receipts are to be paid directly to the authority or the trustee
17 under the applicable authority resolution, trust agreement, or
18 trust indenture for the benefit of the owners of the bonds and
19 benefited parties until the authority's bonds and ancillary
20 facilities are no longer outstanding. Once the bonds or ancillary
21 facilities are no longer outstanding, an officer or agent of this
22 state who shall receive any TSRs shall hold them in trust for the
23 authority or the trustee, as applicable, and shall promptly remit
24 the same to the authority or the trustee, as applicable.

25 (7) The net proceeds and any earnings on the net proceeds
26 shall never be pledged to, or made available for, payment of the
27 bonds or ancillary facilities or any interest or redemption price

1 or any other debt or obligation of the authority.

2 Sec. 9. The issuance of bonds and the execution of any
3 ancillary facility under the provisions of this act shall not
4 directly, or indirectly, or contingently obligate the state or any
5 political subdivision of this state to pay any amounts to the
6 authority or owner of bonds or benefited parties or levy or pledge
7 any form of taxation whatsoever for the bonds or ancillary
8 facilities. The bonds and any ancillary facility are not a debt or
9 liability of this state or any agency or instrumentality of this
10 state, other than the authority as set forth in this act, either
11 legal, moral, or otherwise, and nothing contained in this act shall
12 be construed to authorize the authority to incur any indebtedness
13 on behalf of or in any way to obligate this state or any political
14 subdivision of this state, and the bonds and any ancillary facility
15 shall contain on the face of the bond and ancillary facility or
16 other prominent place on the bond or ancillary facility in bold
17 typeface a statement to that effect.

18 Sec. 10. (1) It is determined that the creation of the
19 authority and the carrying out of its authorized purposes is in all
20 respects a public and governmental purpose for the benefit of the
21 people of this state and for the improvement of their health,
22 safety, welfare, comfort, and security, and that these purposes are
23 public purposes and that the authority will be performing an
24 essential governmental function in the exercise of the powers
25 conferred upon it by this act.

26 (2) The property of the authority and its income and
27 operations shall be exempt from taxation by this state and any

1 political subdivision of this state.

2 (3) In the case of any bonds, the interest on which is
3 intended to be exempt from federal income tax, the authority shall
4 prescribe restrictions on the use of the proceeds of those bonds
5 and related matters as are necessary to assure the exemption, and
6 the recipients of proceeds of those bonds shall be bound thereby to
7 the extent the restrictions shall be made applicable to them. Any
8 recipient of the proceeds of bonds bearing interest that is
9 intended to be exempt from federal income tax, including without
10 limitation this state or any political subdivision of this state,
11 is authorized to execute a tax regulatory agreement with the
12 authority and, as to any political subdivision that is a recipient
13 of the proceeds of bonds bearing interest that is intended to be
14 exempt from federal income, this state. The execution of a tax
15 regulatory agreement may be treated as a condition to receiving any
16 proceeds of a bond issued under this act.

17 Sec. 11. (1) This state hereby pledges and agrees with the
18 authority, and the owners of the bonds and benefited parties, that
19 until all bonds and ancillary facilities, together with the
20 interest on the bonds and ancillary facilities and all costs and
21 expenses in connection with any action or proceedings by or on
22 behalf of owners of bonds or benefited parties, are fully paid and
23 discharged, that this state will do all of the following:

24 (a) Irrevocably direct the escrow agent under the master
25 settlement agreement to transfer the TSRs directly to the authority
26 or its assignee.

27 (b) Enforce the authority's rights to receive the TSRs to the

1 full extent permitted by the terms of the master settlement
2 agreement.

3 (c) Not amend the master settlement agreement in any manner
4 that would materially impair the rights of the owners of the bonds
5 or of the benefited parties.

6 (d) Not limit or alter the rights of the authority to fulfill
7 the terms of its agreements with owners of the bonds or benefited
8 parties.

9 (e) Not in any way impair the rights and remedies of owners of
10 the bonds or benefited parties or the security for the bonds or
11 ancillary facilities, provided, that nothing in this act shall be
12 construed to preclude this state's regulation of smoking, and the
13 taxation and regulation of the sale of cigarettes or other tobacco
14 products.

15 (f) Not fail to enforce the qualifying statute.

16 (g) Not amend, supersede, or repeal the qualifying statute in
17 any way that would materially adversely affect the amount of any
18 payment to, or materially impair the rights of, the authority,
19 owners of the bonds, or the benefited parties.

20 (2) The state budget director is authorized and directed to
21 include the pledge and agreement made under this section in sale
22 agreements and the authority is authorized and directed to include
23 the pledge and agreement in any contract with the owners of the
24 bonds and benefited parties.

25 (3) Prior to the date that is 1 year and 1 day after the
26 authority no longer has any bonds or ancillary facilities
27 outstanding, the authority shall have no authority to file a

1 voluntary petition under chapter 9 of the federal bankruptcy code
2 or such corresponding chapter or sections as may, from time to
3 time, be in effect, and neither any public officer or any
4 organization, entity, or other person shall authorize the authority
5 to be or become a debtor under chapter 9 of the federal bankruptcy
6 code or any successor or corresponding chapter or sections during
7 that period. This state hereby covenants with the owners of the
8 bonds and benefited parties that this state will not limit or alter
9 the denial of the authority under this subsection during the period
10 referred to in this subsection. The authority is authorized and
11 directed to include this covenant as an agreement of this state in
12 any contract with the owners of the bonds and benefited parties.

13 Sec. 12. Notwithstanding any restriction contained in any
14 other law, rule, regulation, or order to the contrary, this state
15 and all political subdivisions of this state, their officers,
16 boards, commissioners, departments or other agencies, governmental
17 pension funds, all banks, trust companies, savings banks and
18 institutions, building and loan associations, savings and loan
19 associations, investment companies and other persons carrying on a
20 banking or investment business, and all executors, administrators,
21 guardians, trustees and other fiduciaries, and all other persons
22 whatsoever who now are or may hereafter be authorized to invest in
23 bonds or other obligations of the state, may properly and legally
24 invest any sinking funds, money or other funds, including capital,
25 belonging to them or within their control, in any bond. Bonds
26 issued by the authority under this act are hereby made bonds that
27 may properly and legally be deposited with, and received by, any

1 state municipal officers or agency of this state, for any purpose
2 for which the deposit of bonds or other obligations of this state
3 is now, or may be, authorized by law.

4 Sec. 13. The authority may be dissolved by act of the
5 legislature on condition that the authority has no debts or
6 obligations outstanding or that provision has been made for the
7 payment or retirement of all debts or obligations. Upon any such
8 dissolution of the authority, all property, funds, and assets of
9 the authority shall be vested in this state.

10 Sec. 14. This act and all powers granted hereby shall be
11 liberally construed to effectuate its intent and their purposes,
12 without implied limitations on the powers of the authority, the
13 state budget director, and the state treasurer. This act shall
14 constitute full, complete, and additional authority for all things
15 that are contemplated in this act to be done. All rights and powers
16 granted in this act shall be cumulative with those derived from
17 other sources and shall not, except as expressly stated in this
18 act, be construed in limitation of those rights and powers. Insofar
19 as the provisions of this act are inconsistent with the provisions
20 of any other act, general or special, the provisions of this act
21 shall be controlling. If any clause, paragraph, section, or part of
22 this act is adjudged by any court of competent jurisdiction to be
23 invalid, that judgment shall not affect, impair, or invalidate the
24 remainder of the clause, paragraph, section, or part but shall be
25 applied in its operation to the clause, sentence, paragraph,
26 section, or part directly involved in the controversy in which the
27 judgment shall have been rendered.

1 Sec. 15. Subject to any agreements with bondholders, the
2 authority has the power to use any funds available to purchase
3 bonds of the authority at a price determined by the authority.

4 Sec. 16. The authority shall submit an annual report no later
5 than March 1 relating to its activities for the preceding calendar
6 year to the governor, the speaker and minority leader of the house
7 of representatives, and the majority and minority leaders of the
8 senate.

9 Sec. 17. (1) One million dollars is appropriated from the
10 general fund to the authority for the fiscal year ending September
11 30, 2006 for all of the following purposes:

12 (a) Payment of operating expenses of the authority.

13 (b) Funding any reserve requirements.

14 (2) Money appropriated under this section that is not expended
15 before the end of the state fiscal year ending September 30, 2006
16 shall not revert to the general fund and may be retained and used
17 by the authority for the purposes authorized by subsection (1).

18 Sec. 18. Except as otherwise provided in this section, any
19 legal action against the authority shall be brought in the Michigan
20 court of appeals, which shall have exclusive jurisdiction. However,
21 any legal actions against the authority seeking money damages shall
22 be brought in the Michigan court of claims, which shall have
23 exclusive original jurisdiction with respect to actions against the
24 authority seeking money damages.

25 Sec. 19. This act is declared to be severable. If any portion
26 of this act or the application of this act to any person or
27 circumstances is found to be invalid by a court, the invalidity of

1 that portion or application shall not affect the remaining portions
2 or applications that can be given effect without the invalid
3 portion or application, provided the remaining portions are not
4 determined by the court to be inoperable.

5 Enacting section 1. This act does not take effect unless all
6 of the following bills of the 93rd Legislature are enacted into
7 law:

- 8 (a) Senate Bill No. 533.
- 9 (b) Senate Bill No. 633.
- 10 (c) House Bill No. 4342.
- 11 (d) House Bill No. 4972.
- 12 (e) House Bill No. 4973.
- 13 (f) House Bill No. 5047.
- 14 (g) House Bill No. 5108.
- 15 (h) House Bill No. 5109.