

**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  
5       with 4 major tobacco companies that should result in the state

1 receiving substantial sums of money in perpetuity assuming no  
2 adverse changes in cigarette consumption, market share, financial  
3 condition of those tobacco companies, and changes in law.

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

6 (c) Selling the state's right to receive tobacco settlement  
7 payments for limited periods of years is a prudent method of  
8 managing the risks associated with reliance on the receipt of  
9 tobacco settlement payments in perpetuity.

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

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

18 Sec. 3. As used in this act:

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

1 approved by the authority, including without limitation any  
2 arrangements referred to in this act.

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

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

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

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

11 (f) "Code" means the United States internal revenue code of  
12 1986, as amended, and any successor provision of law.

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

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

19 (i) "Financing costs" means all capitalized interest,  
20 operating and debt service reserves, costs of issuance, fees for  
21 credit and liquidity enhancements, any item of expense directly or  
22 indirectly payable or reimbursable by the authority and related to  
23 the authorization, sale, or issuance of bonds, including without  
24 limitation underwriting fees, counsel fees, fees of the attorney  
25 general and fees and expenses of consultants and fiduciaries, and  
26 other costs as the authority determines to be desirable in issuing,  
27 securing, and marketing the bonds.

1 (j) "Interest rate exchange or similar agreement" means a  
2 written contract with a counterparty to provide for an exchange of  
3 payments based upon fixed or variable interest rates, or both fixed  
4 and variable interest rates.

5 (k) "Master settlement agreement" means the settlement  
6 agreement and related documents entered into on November 23, 1998,  
7 and incorporated into a consent decree and final judgment entered  
8 into on December 7, 1998, in Kelley Ex Rel. Michigan v Phillip  
9 Morris Incorporated, et al., Ingham county circuit court, docket  
10 no. 96-84281CZ.

11 (l) "Net proceeds" means the amount of proceeds remaining  
12 following each sale of bonds which are not required by the  
13 authority to establish and fund reserve or escrow funds or  
14 termination or settlement payments under ancillary facilities and  
15 to provide the financing costs and other expenses and fees directly  
16 related to the authorization and issuance of bonds.

17 (m) "Operating expenses" means the reasonable operating  
18 expenses of the authority, including without limitation the cost of  
19 preparation of accounting and other reports, costs of maintenance  
20 of the ratings on the securities, insurance premiums, and costs of  
21 authority meetings or other required activities of the authority,  
22 counsel fees, including the fees of the attorney general, and fees  
23 and expenses incurred for consultants and fiduciaries.

24 (n) "Outstanding" means, when used with respect to bonds, all  
25 bonds other than bonds that shall have been paid in full at  
26 maturity or that may be considered not outstanding under the  
27 applicable authority resolution, trust indenture or trust agreement

1 authorizing the issuance of the bonds and when used with respect to  
2 ancillary facilities, all ancillary facilities other than ancillary  
3 facilities that have been paid in full or that may be considered  
4 not outstanding under such ancillary facilities.

5 (o) "Person" means an individual, corporation, limited or  
6 general partnership, association, joint venture, limited liability  
7 company, or a governmental entity, including this state.

8 (p) "Qualifying statute" means that term as defined in the  
9 master settlement agreement, which is 1999 PA 244, MCL 445.2051 to  
10 445.2052.

11 (q) "Residual interests" means 1 or more of the following:

12 (i) The unencumbered tobacco revenues.

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

14 (iii) The income of the authority that is in excess of the  
15 authority's requirements to pay its operating expenses, debt  
16 service, sinking fund requirements, reserve fund or escrow fund  
17 requirements, and any other contractual obligations to the owners  
18 of the bonds or benefited parties, or that may be incurred in  
19 connection with the issuance of the bonds or the execution of  
20 ancillary facilities.

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

23 (r) "Sale agreement" means any agreement authorized under this  
24 act in which this state provides for the sale of TSRs to the  
25 authority.

26 (s) "State representative" means the state acting by and  
27 through the state treasurer.

1           (t) "State treasurer" means the state treasurer of this state  
2 or his or her designee who shall be designated by a written  
3 instrument signed by the state treasurer and maintained in a  
4 permanent file and whose signature shall have the same force and  
5 effect as the signature of the state treasurer for all purposes  
6 under this act.

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

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

11          (ii) This state's rights to receive the tobacco settlement  
12 revenue.

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

16          (w) "Unencumbered tobacco revenues" means that portion of the  
17 TSRs that are not subject to the pledge of the applicable authority  
18 resolution, trust agreement, or trust indenture by the authority to  
19 the repayment of any bonds issued under the terms of the applicable  
20 authority resolution, trust agreement, or trust indenture.

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

23          Sec. 4. (1) The Michigan tobacco settlement finance authority  
24 is created as a public body corporate and politic within the  
25 department of treasury. The authority is a state institution  
26 within the meaning of section 9 of article II of the state  
27 constitution of 1963 and an instrumentality of this state

1 exercising public and essential governmental functions. The  
2 exercise by the authority of the powers conferred by this act is an  
3 essential governmental function of this state.

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

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

18 (4) The board of the authority shall authorize the issuance of  
19 bonds by resolution. The authority may issue bonds, including  
20 refunding bonds, without obtaining the consent of any department,  
21 division, commission, board, bureau, or agency of this state and  
22 without any other proceedings or the occurrence of any other  
23 conditions other than those proceedings, conditions, or things that  
24 are specifically required by this act. Every issue of bonds shall  
25 be special revenue obligations payable from and secured by a pledge  
26 of encumbered tobacco revenues and other assets, including without  
27 limitation the proceeds of the bonds deposited in a reserve fund

1 for the benefit of the owners of the bonds, earnings on funds of  
2 the authority and other funds as may become available, upon the  
3 terms and conditions as specified by the authority in the authority  
4 resolution under which the bonds are issued or in a related trust  
5 agreement or trust indenture.

6 (5) The authority may issue bonds to refund any bonds by the  
7 issuance of new bonds, whenever it considers the refunding  
8 expedient, whether the bonds to be refunded have or have not  
9 matured, and to issue bonds partly to refund bonds then outstanding  
10 and partly for any of its other authorized purposes. The refunding  
11 bonds may be exchanged for the bonds to be refunded or sold and the  
12 proceeds applied to the purchase, redemption, or payment of those  
13 bonds.

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

16 (a) The date of issuance.

17 (b) Whether the bonds shall bear interest at fixed or variable  
18 rates, or both fixed and variable rates.

19 (c) Whether the bonds shall be payable at or prior to  
20 maturity.

21 (d) When the bonds shall mature.

22 (e) Whether the authority may redeem the bond prior to  
23 maturity, at what price, and under what conditions.

24 (f) The method of payment of principal of and interest on the  
25 bonds.

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

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

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

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

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

25          (9) This act shall also govern the negotiability of bonds  
26          issued under this act. Any bonds issued under this act shall be  
27          fully negotiable within the meaning and for all purposes of the

1 uniform commercial code. By accepting the bond or obligation, each  
2 owner of a bond or other obligation of the authority shall be  
3 conclusively considered to have agreed that the bond is and shall  
4 be fully negotiable within the meaning and for all purposes of the  
5 uniform commercial code.

6 (10) In the discretion of the authority, any bonds and any  
7 ancillary facilities may be secured by a trust agreement or trust  
8 indenture by and between the authority and a trustee, which may be  
9 any trust company or bank having the powers of a trust company,  
10 whether located within or without this state. A trust agreement or  
11 trust indenture authorized under this subsection, or an authority  
12 resolution providing for the issuance of bonds may provide for the  
13 creation and maintenance of reserves as the authority shall  
14 determine to be proper and may include covenants setting forth the  
15 duties of the authority in relation to the bonds, the ancillary  
16 facilities, the income to the authority, the sale agreement, the  
17 encumbered tobacco revenues and residual interests. A trust  
18 agreement or trust indenture authorized under this subsection or an  
19 authority resolution may contain provisions respecting the custody,  
20 safeguarding, and application of all money and bonds and may  
21 contain provisions for protecting and enforcing the rights and  
22 remedies under the sale agreement of the owners of the bonds and  
23 benefited parties as may be reasonable and proper and not in  
24 violation of law. It shall be lawful for any bank or trust company  
25 incorporated under the laws of this state that may act as  
26 depository of the proceeds of bonds or of any other funds or  
27 obligations received on behalf of the authority to furnish

1 indemnifying bonds or to pledge obligations as may be required by  
2 the authority. Any trust agreement or trust indenture authorized  
3 under this subsection or an authority resolution may contain other  
4 provisions as the authority may consider reasonable and proper for  
5 priorities and subordination among the owners of bonds and  
6 benefited parties.

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

10 (a) To facilitate the issuance, sale, resale, purchase,  
11 repurchase, or payment of bonds, or the making or performance of  
12 swap contracts, including without limitation bond insurance,  
13 letters of credit, and liquidity facilities.

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

16 (12) The authority may enter into, amend, or terminate any  
17 ancillary facility as it determines to be necessary or appropriate  
18 to place the obligations or investments of the authority, as  
19 represented by the bonds or the investment of their proceeds, in  
20 whole or in part, on the interest rate, cash flow, or other basis  
21 desired by the authority, which facility may include without  
22 limitation contracts commonly known as interest rate swap  
23 agreements, and futures or contracts providing for payments based  
24 on levels of, or changes in, interest rates. The authority may  
25 enter into these contracts or arrangements in connection with, or  
26 incidental to, entering into, or maintaining any agreement that  
27 secures bonds of the authority or any investment, or contract

1 providing for investments, of reserves or similar facility  
2 guaranteeing an investment rate for a period of years.

3 (13) The determination by the authority that an ancillary  
4 facility or the amendment or termination of an ancillary facility  
5 is necessary or appropriate is conclusive. The authority may  
6 determine the terms and conditions of an ancillary facility,  
7 including without limitation provisions as to security, default,  
8 termination, payments, remedy, and consent to service of process.

9 (14) Bonds and ancillary facilities may contain a recital that  
10 they are issued pursuant to this act, which recital is conclusive  
11 evidence of the validity of the bonds and any ancillary facility  
12 and the regularity of the proceedings relating to the bonds and  
13 ancillary facilities.

14 (15) A member of the board or an officer, appointee, or  
15 employee of the authority shall not be subject to personal  
16 liability when acting in good faith within the scope of his or her  
17 authority or on account of liability of the authority. The board  
18 may defend and indemnify a member of the board or an officer,  
19 appointee, or employee of the authority against liability arising  
20 out of the discharge of his or her official duties. The authority  
21 may indemnify and procure insurance indemnifying members of the  
22 board and other officers and employees of the authority from  
23 personal loss or accountability for liability asserted by a person  
24 with regard to bonds or other obligations of the authority, or from  
25 any personal liability or accountability by reason of the issuance  
26 of the bonds or other obligations or by reason of any other action  
27 taken or the failure to act by the authority. The authority may

1 also purchase and maintain insurance on behalf of any person  
2 against the liability asserted against the person and incurred by  
3 the person in any capacity or arising out of the status of the  
4 person as a member of the board or an officer or employee of the  
5 authority, whether or not the authority would have the power to  
6 indemnify the person against that liability under this subsection.

7 (16) A member, officer, employee or agent of the authority  
8 shall not have an interest, either directly or indirectly, in any  
9 business organization engaged in any business, contract or  
10 transaction with the authority or in any contract of any other  
11 person engaged in any business with the authority, or in the  
12 purchase, sale, lease or transfer of any property to or from the  
13 authority.

14 (17) Bonds issued under this act are not subject to the  
15 revised municipal finance act, 2001 PA 34, MCL 141.2101 to  
16 141.2821.

17 (18) The issuance of bonds under this act is subject to the  
18 agency financing reporting act, 2002 PA 470, MCL 129.171 to  
19 129.177.

20 (19) A resolution of the authority authorizing bonds, or the  
21 provisions of a trust agreement authorized by resolution of the  
22 authority, may delegate to an officer or other employee of the  
23 authority, or an agent designated by the authority, for the period  
24 of time as the authority determines, the power to cause the issue,  
25 sale, and delivery of the bonds within limits on those bonds  
26 established by the authority as to any of the following:

27 (a) The form.

House Bill No. 5048 (H-3) as amended September 28, 2005

(b) The maximum interest rate or rates.

(c) The maturity date or dates.

(d) The purchase price.

(e) The denominations.

(f) The redemption premiums.

(g) The nature of the security.

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

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

(20) The board shall rotate bond counsel when issuing bonds under this act. The board shall authorize and issue bonds in a manner that provides that not less than 3 financial institutions or brokerage firms are involved in marketing and underwriting the bonds. [Not less than 1 of the 3 financial institutions or brokerage firms described in this subsection shall be a Michigan based financial institution or brokerage firm.] A single financial institution or brokerage firm shall not

market or underwrite more than 40% of the bonds issued under this act.

Sec. 5. The authority shall exercise its duties independently of the state treasurer. The staffing, budgeting, procurement, and related administrative functions of the authority shall be performed under the direction and supervision of the state treasurer.

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

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

(a) The state treasurer.

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

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

4 (d) One member appointed by the governor from a list of 2 or  
5 more individuals selected by the majority leader of the senate,  
6 with knowledge, skill, or experience in the business or financial  
7 fields.

8 (e) One member appointed by the governor from a list of 2 or  
9 more individuals selected by the speaker of the house of  
10 representatives, with knowledge, skill, or experience in the  
11 business or financial fields.

12 (3) The appointed members shall serve for terms of 4 years.  
13 Of the 3 members first appointed, 1 shall be appointed for an  
14 initial term of 1 year, 1 shall be appointed for an initial term of  
15 2 years, and 1 shall be appointed for an initial term of 3 years.  
16 The appointed members shall serve until a successor is appointed.  
17 A vacancy shall be filled for the balance of the unexpired term in  
18 the same manner as the original appointment.

19 (4) The chief executive officer or director of any state  
20 department or agency who is a designated member of the board may  
21 appoint a representative to serve in his or her absence.

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

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

27 (7) A majority of the appointed and serving members of the

1 board shall constitute a quorum of the board for the transaction of  
2 business. A member may participate in a meeting by the use of  
3 amplified telephonic or video conferencing equipment. A member  
4 participating by the use of video conferencing equipment shall be  
5 considered to be present for purposes of a quorum and for purposes  
6 of voting. Actions of the board shall be approved by a majority  
7 vote of the members present at a meeting.

8 (8) The authority may employ or contract for legal, financial,  
9 and technical experts, and other officers, agents, and employees,  
10 permanent and temporary, as the authority requires, and shall  
11 determine their qualifications, duties, and compensation. The  
12 board may delegate to 1 or more agents or employees those powers or  
13 duties with the limitations as the board considers proper.

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

17 (10) A member of the board or officer, employee, or agent of  
18 the authority shall discharge the duties of his or her position in  
19 a nonpartisan manner, with good faith, and with that degree of  
20 diligence, care, and skill that an ordinarily prudent person would  
21 exercise under similar circumstances in a like position. In  
22 discharging the duties, a member of the board or an officer,  
23 employee, or agent, when acting in good faith, may rely upon the  
24 opinion of counsel for the authority, upon the report of an  
25 independent appraiser selected with reasonable care by the board,  
26 or upon financial statements of the authority represented to the  
27 member of the board or officer, employee, or agent of the authority

1 to be correct by the president or the officer of the authority  
2 having charge of its books or account, or stated in a written  
3 report by a certified public accountant or firm of certified public  
4 accountants fairly to reflect the financial condition of the  
5 authority.

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 securities for the payment of  
10 tenders of bonds, or for the payment upon maturity of short-term  
11 bonds.

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

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

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

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

1 net proceeds to the state in the amount of \$1,000,000,000.00, which  
2 shall be deposited to and held, used, and expended by the state  
3 treasurer in the manner provided for in the Michigan trust fund  
4 act, 2000 PA 489, MCL 12.251 to 12.256.

5 (2) Any sale agreement may also provide for the additional  
6 sale of a portion of the state's tobacco receipts to replenish any  
7 reserve fund established by the authority in connection with the  
8 authority's issuance of bonds to fund the sale agreement or sale  
9 agreements described in subsection (1).

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

1 The state representative in any sale agreement may agree to, and  
2 the authority may provide for, the assignment of the authority's  
3 right, title, and interest under the sale agreement for the benefit  
4 and security of the owners of bonds and benefited parties.

5 (4) The approval of the state administrative board shall be  
6 made by a resolution adopted by the state administrative board and  
7 that approval together with the sale agreement made pursuant to  
8 that approval shall be conclusively presumed to be valid for all  
9 purposes unless challenged in an action brought in the court of  
10 appeals within 30 days after the adoption of the resolution. All  
11 challenges shall be heard and determined as expeditiously as  
12 possible with lawful precedence over other matters. Consideration  
13 by the court of appeals shall be based solely on the record before  
14 the state administrative board and briefs to the court shall be  
15 limited to whether the resolution conforms to the constitution and  
16 laws of this state and the United States and is within the  
17 authority of the state administrative board under this act.

18 (5) A sale of all or a portion of the state's tobacco receipts  
19 to the authority under a sale agreement shall be treated as a true  
20 sale and absolute transfer of the state's tobacco receipts  
21 transferred and not as a pledge or other security interest for any  
22 borrowing. A sale agreement that expressly states that the transfer  
23 of the state's tobacco receipts to the authority is a sale or other  
24 absolute transfer signifies that the transaction is a true sale and  
25 is not a secured transaction and that title, legal and equitable,  
26 has passed to the authority. The characterization of a sale as an  
27 absolute transfer by the participants shall not be negated or

1 adversely affected by the fact that only a portion of the state's  
2 tobacco receipts are transferred, or by the acquisition or  
3 retention by this state of a residual interest, or by the  
4 participation by any state official as a member or officer of the  
5 authority, or by whether the state is responsible for collecting  
6 the TSRs or otherwise enforcing the master settlement agreement or  
7 retains legal title to the portion of the state's tobacco receipts  
8 for the purposes of these collection activities, or by any  
9 characterization of the authority or its obligations for purposes  
10 of accounting, taxation, or securities regulation, or by any other  
11 factor whatsoever. A true sale under this act applies regardless of  
12 whether the authority has any recourse against this state, or any  
13 other term of the sale agreement, including the fact that this  
14 state acts as a collector of the state's tobacco receipts or the  
15 treatment of the transfer as a financing for any purpose.

16 (6) On and after the effective date of each sale of TSRs, the  
17 state shall have no right, title, or interest in or to the TSRs  
18 sold, and the TSRs sold shall be property of the authority and not  
19 of this state, and shall be owned, received, held, and disbursed by  
20 the authority and not this state. On or before the effective date  
21 of a sale described in this subsection, this state through the  
22 state representative shall notify the escrow agent under the master  
23 settlement agreement that this state has sold all or a portion of  
24 the state's tobacco receipts to the authority, including, if  
25 applicable, a statement as to the percentage sold and shall  
26 irrevocably instruct the escrow agent that, subsequent to the date  
27 specified in the notice, that portion of the state's tobacco

1 receipts are to be paid directly to the authority or the trustee  
2 under the applicable authority resolution, trust agreement, or  
3 trust indenture for the benefit of the owners of the securities and  
4 benefited parties until the authority's bonds and ancillary  
5 facilities are no longer outstanding. Once the bonds or ancillary  
6 facilities are no longer outstanding, an officer or agent of this  
7 state who shall receive any encumbered TSRs shall hold them in  
8 trust for the authority or the trustee, as applicable, and shall  
9 promptly remit the same to the authority or the trustee, as  
10 applicable.

11 (7) The net proceeds and any earnings on the net proceeds  
12 shall never be pledged to, or made available for, payment of the  
13 bonds or ancillary facilities or any interest or redemption price  
14 or any other debt or obligation of the authority. The state is  
15 authorized and may arrange for the availability of the net proceeds  
16 and residual interests from the authority on the terms and  
17 conditions as the state representative considers appropriate and  
18 may include in the sale agreement provisions for interfund  
19 transactions with respect to the net proceeds and residual  
20 interests between the state and the authority.

21 Sec. 9. The issuance of bonds and the execution of any  
22 ancillary facility under the provisions of this act shall not  
23 directly, or indirectly, or contingently obligate the state or any  
24 political subdivision of this state to pay any amounts to the  
25 authority or owner of bonds or benefited parties or levy or pledge  
26 any form of taxation whatsoever for the bonds or ancillary  
27 facilities. The bonds and any ancillary facility are not a debt or

1 liability of this state or any agency or instrumentality of this  
2 state, other than the authority as set forth in this act, either  
3 legal, moral, or otherwise, and nothing contained in this act shall  
4 be construed to authorize the authority to incur any indebtedness  
5 on behalf of or in any way to obligate this state or any political  
6 subdivision of this state, and the bonds and any ancillary facility  
7 shall contain on the face of the bond and ancillary facility or  
8 other prominent place on the bond or ancillary facility in bold  
9 typeface a statement to that effect.

10       Sec. 10. (1) It is determined that the creation of the  
11 authority and the carrying out of its authorized purposes is in all  
12 respects a public and governmental purpose for the benefit of the  
13 people of this state and for the improvement of their health,  
14 safety, welfare, comfort, and security, and that these purposes are  
15 public purposes and that the authority will be performing an  
16 essential governmental function in the exercise of the powers  
17 conferred upon it by this act.

18       (2) The property of the authority and its income and  
19 operations shall be exempt from taxation by this state and any  
20 political subdivision of this state.

21       (3) In the case of any bonds, the interest on which is  
22 intended to be exempt from federal income tax, the authority shall  
23 prescribe restrictions on the use of the proceeds of those bonds  
24 and related matters as are necessary to assure the exemption, and  
25 the recipients of proceeds of those bonds shall be bound thereby to  
26 the extent the restrictions shall be made applicable to them. Any  
27 recipient of the proceeds of bonds bearing interest that is

1 intended to be exempt from federal income tax, including without  
2 limitation this state or any political subdivision of this state,  
3 is authorized to execute a tax regulatory agreement with the  
4 authority and, as to any political subdivision that is a recipient  
5 of the proceeds of bonds bearing interest that is intended to be  
6 exempt from federal income, this state. The execution of a tax  
7 regulatory agreement may be treated as a condition to receiving any  
8 proceeds of a bond issued under this act.

9       Sec. 11. (1) This state hereby pledges and agrees with the  
10 authority, and the owners of the bonds and benefited parties, that  
11 until all bonds and ancillary facilities, together with the  
12 interest on the bonds and ancillary facilities and all costs and  
13 expenses in connection with any action or proceedings by or on  
14 behalf of owners of bonds or benefited parties, are fully paid and  
15 discharged, that this state will do all of the following:

16       (a) Irrevocably direct the escrow agent under the master  
17 settlement agreement to transfer the TSRs directly to the authority  
18 or its assignee.

19       (b) Enforce the authority's rights to receive the TSRs to the  
20 full extent permitted by the terms of the master settlement  
21 agreement.

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

25       (d) Not limit or alter the rights of the authority to fulfill  
26 the terms of its agreements with owners of the bonds or benefited  
27 parties.

1           (e) Not in any way impair the rights and remedies of owners of  
2 the bonds or benefited parties or the security for the bonds or  
3 ancillary facilities, provided, that nothing in this act shall be  
4 construed to preclude the state's regulation of smoking, and the  
5 taxation and regulation of the sale of cigarettes or other tobacco  
6 products.

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

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

12          (2) The state representative is authorized and directed to  
13 include the pledge and agreement made under this section in sale  
14 agreements and the authority is authorized and directed to include  
15 the pledge and agreement in any contract with the owners of the  
16 bonds and benefited parties.

17          (3) Prior to the date that is 1 year and 1 day after the  
18 authority no longer has any bonds or ancillary facilities  
19 outstanding, the authority shall have no authority to file a  
20 voluntary petition under chapter 9 of the federal bankruptcy code  
21 or such corresponding chapter or sections as may, from time to  
22 time, be in effect, and neither any public officer or any  
23 organization, entity, or other person shall authorize the authority  
24 to be or become a debtor under chapter 9 of the federal bankruptcy  
25 code or any successor or corresponding chapter or sections during  
26 that period. The state hereby covenants with the owners of the  
27 bonds and benefited parties that this state will not limit or alter

1 the denial of the authority under this subsection during the period  
2 referred to in this subsection. The authority is authorized and  
3 directed to include this covenant as an agreement of this state in  
4 any contract with the owners of the bonds and benefited parties.

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

23       Sec. 13. The authority may be dissolved by act of the  
24 legislature on condition that the authority has no debts or  
25 obligations outstanding or that provision has been made for the  
26 payment or retirement of all debts or obligations. Upon any such  
27 dissolution of the authority, all property, funds, and assets of

1 the authority shall be vested in this state.

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

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

23       Sec. 16. The authority shall submit an annual report no later  
24 than March 1 relating to its activities for the preceding calendar  
25 year to the governor, the speaker and minority leader of the house  
26 of representatives, and the majority and minority leaders of the  
27 senate.

1       Sec. 17. (1) One million dollars is appropriated from the  
2 general fund to the authority for the fiscal year ending September  
3 30, 2006 for all of the following purposes:

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

5       (b) Funding any reserve requirements.

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

10       Sec. 18. Except as otherwise provided in this section, any  
11 legal action against the authority shall be brought in the Michigan  
12 court of appeals, which shall have exclusive jurisdiction. However,  
13 any legal actions against the authority seeking money damages shall  
14 be brought in the Michigan court of claims, which shall have  
15 exclusive original jurisdiction with respect to actions against the  
16 authority seeking money damages.

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

20       (a) Senate Bill No. 359.

21       (b) Senate Bill No. 533.

22       (c) House Bill No. 4972.

23       (d) House Bill No. 4973.

24       (e) House Bill No. 5047.

25       (f) House Bill No. 5108.

26       (g) House Bill No. 5109.