

**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) "Financing costs" means all capitalized interest,  
22 operating and debt service reserves, costs of issuance, fees for  
23 credit and liquidity enhancements, any item of expense directly or  
24 indirectly payable or reimbursable by the authority and related to  
25 the authorization, sale, or issuance of bonds, including without  
26 limitation underwriting fees, counsel fees, fees of the attorney  
27 general and fees and expenses of consultants and fiduciaries, and

1 other costs as the authority determines to be desirable in issuing,  
2 securing, and marketing the bonds.

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

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

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

19 (m) "Operating expenses" means the reasonable operating  
20 expenses of the authority, including without limitation the cost of  
21 preparation of accounting and other reports, costs of maintenance  
22 of the ratings on the securities, insurance premiums, and costs of  
23 authority meetings or other required activities of the authority,  
24 counsel fees, including the fees of the attorney general, and fees  
25 and expenses incurred for consultants and fiduciaries and any other  
26 costs described in section 4(12).

27 (n) "Outstanding" means, when used with respect to bonds, all

1 bonds other than bonds that shall have been paid in full at  
2 maturity or that may be considered not outstanding under the  
3 applicable authority resolution, trust indenture or trust agreement  
4 authorizing the issuance of the bonds and when used with respect to  
5 ancillary facilities, all ancillary facilities other than ancillary  
6 facilities that have been paid in full or that may be considered  
7 not outstanding under such ancillary facilities.

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

11 (p) "Qualifying statute" means that term as defined in the  
12 master settlement agreement, which is 1999 PA 244, MCL 445.2051 to  
13 445.2052.

14 (q) "Residual interests" means 1 or more of the following as  
15 provided in any sale agreement:

16 (i) The unencumbered tobacco revenues.

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

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

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

27 (r) "Sale agreement" means any agreement authorized under this

1 act in which this state provides for the sale of all or a portion  
2 of the state's tobacco receipts under section 8.

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

9 (t) "State's tobacco receipts" means:

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

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

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

18 (v) "Unencumbered tobacco revenues" means that portion of the  
19 TSRs that are not encumbered tobacco revenues.

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

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

1 exercise by the authority of the powers conferred by this act is an  
2 essential governmental function of this state.

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

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

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

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

5 (5) The authority may issue bonds to refund any bonds by the  
6 issuance of new bonds, whenever it considers the refunding  
7 expedient, whether the bonds to be refunded have or have not  
8 matured, and to issue bonds partly to refund bonds then outstanding  
9 and partly for restructuring or any of its other authorized  
10 purposes.

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

13 (a) The date of issuance.

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

17 (c) Whether the bonds shall be payable at or prior to  
18 maturity.

19 (d) When the bonds shall mature.

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

22 (f) The method of payment of principal of and interest on the  
23 bonds.

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

26 (h) If any officer whose signature or the facsimile of whose  
27 signature appears on any bond shall cease to be that officer before



1 the delivery of the bond, that signature or facsimile shall  
2 nevertheless be valid and sufficient for all purposes as if he or  
3 she had remained in office until delivery of the bond.

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

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

11 (8) This act shall govern the creation, perfection, priority,  
12 and enforcement of any pledge of revenues or other security made by  
13 the authority. Each pledge made by the authority shall be valid and  
14 binding at the time the pledge is made. The encumbered tobacco  
15 revenues, reserves, or earnings pledged or earnings on the  
16 investment of the encumbered tobacco revenues, reserves, or  
17 earnings pledged shall immediately be subject to the lien of the  
18 pledge without any physical delivery or further act and the lien on  
19 that pledge shall be valid and binding as against all parties  
20 having claims of any kind in tort, contract or otherwise against  
21 the authority, irrespective of whether the parties have notice of  
22 the lien or pledge, and without filing or recording the pledge. The  
23 resolution or other instrument by which a pledge is created does  
24 not have to be recorded.

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 or trust indenture authorized by  
22 resolution of the authority, may delegate to an officer or other  
23 employee of the authority, or an agent designated by the authority,  
24 for the period of time as the authority determines, the power to  
25 cause the issue, sale, and delivery of the bonds within limits on  
26 those bonds established by the authority as to any of the  
27 following:

1 (a) The form.

2 (b) The maximum interest rate or rates.

3 (c) The maturity date or dates.

4 (d) The purchase price.

5 (e) The denominations.

6 (f) The redemption premiums.

7 (g) The nature of the security.

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

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

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

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

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

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

26 (a) The state treasurer.

27 (b) The director of the department of labor and economic

1 growth.

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

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

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

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

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

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

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

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

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

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

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



## House Bill No. 5048 as amended October 19, 2005

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

7 (11) The board shall hire an independent public financial  
8 advisor to provide financial and investment advice regarding the  
9 authorization and issuance of bonds and other investment  
10 responsibilities of the board under this act. The duties of the  
11 independent public financial advisor shall include, but are not  
12 limited to, assisting the board << >> in  
13 evaluating and selecting underwriters, brokerage firms, and other  
14 consultants as required to conduct the bond sale, conduct due  
15 diligence on prospective underwriters', brokerage firms', and other  
16 consultants' experience, history, and demonstrated adherence to  
17 ethical standards, and prepare recommendations based upon their due  
18 diligence. The independent public financial advisor shall have  
19 personal experience in asset-backed financing, have experience and  
20 the ability to ascertain the appropriateness of the pricing of the  
21 sales of the state's tobacco receipts, and be able to provide the  
22 board << >> with independent financial  
23 advice. The independent public financial advisor shall not receive  
24 a commission, take down, or other remuneration from an underwriter,  
25 brokerage firm, or other consultant for the underwriting or sale of  
26 bonds that are secured by TSRs. <<

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

3 (a) To solicit and accept gifts, grants, and loans from any  
4 person.

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

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

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

13 (e) To make and amend bylaws.

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

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

23 (h) To engage the services of financial advisors and experts,  
24 legal counsel, placement agents, underwriters, appraisers and other  
25 advisors, consultants and fiduciaries as may be necessary to  
26 effectuate the purposes of this act.

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

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

4           (k) To procure insurance, letters of credit, or other credit  
5 enhancement with respect to any securities for the payment of  
6 tenders of bonds, or for the payment upon maturity of short-term  
7 bonds.

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

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

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

17           Sec. 8. (1) The state budget director with the approval of the  
18 state administrative board may sell to the authority, and the  
19 authority may purchase, for cash or other consideration and in 1 or  
20 more installments, all or a portion of the state's tobacco receipts  
21 pursuant to the terms of 1 or more sale agreements. In the  
22 alternative, the state budget director with the approval of the  
23 state administrative board may sell all or a portion of the state's  
24 tobacco receipts for cash or other consideration to a person or  
25 persons other than the authority, if the terms of the sale  
26 agreement to sell the state's tobacco receipts are in the best  
27 interests of this state and the net proceeds of the sale will not

1 exceed \$1,000,000,000.00. If the sale to a person or persons other  
2 than the authority is in the best interests of this state, the  
3 state administrative board shall approve the terms of the sale  
4 agreement. The sale agreement or combined sale agreements shall  
5 provide for the sale of that portion of the state's tobacco  
6 receipts sufficient to provide net proceeds to the state in the  
7 amount of \$1,000,000,000.00, which shall be deposited to and held,  
8 used, and expended by the state treasurer in the manner provided  
9 for in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to  
10 12.256.

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

1 exemption of the interest on any bonds, if issued as tax-exempt.  
2 The state budget director in any sale agreement may agree to, and  
3 the authority may provide for, the assignment of the authority's  
4 right, title, and interest under the sale agreement for the benefit  
5 and security of the owners of bonds and benefited parties.

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

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

1 authority of the state administrative board under this act.

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

27 (6) On and after the effective date of each sale of TSRs, the

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

21 (7) The net proceeds and any earnings on the net proceeds  
22 shall never be pledged to, or made available for, payment of the  
23 bonds or ancillary facilities or any interest or redemption price  
24 or any other debt or obligation of the authority.

25 Sec. 9. The issuance of bonds and the execution of any  
26 ancillary facility under the provisions of this act shall not  
27 directly, or indirectly, or contingently obligate the state or any

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

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

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

25       (3) In the case of any bonds, the interest on which is  
26 intended to be exempt from federal income tax, the authority shall  
27 prescribe restrictions on the use of the proceeds of those bonds



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

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

20       (a) Irrevocably direct the escrow agent under the master  
21 settlement agreement to transfer the TSRs directly to the authority  
22 or its assignee.

23       (b) Enforce the authority's rights to receive the TSRs to the  
24 full extent permitted by the terms of the master settlement  
25 agreement.

26       (c) Not amend the master settlement agreement in any manner  
27 that would materially impair the rights of the owners of the bonds

1 or of the benefited parties.

2 (d) Not limit or alter the rights of the authority to fulfill  
3 the terms of its agreements with owners of the bonds or benefited  
4 parties.

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

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

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

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

21 (3) Prior to the date that is 1 year and 1 day after the  
22 authority no longer has any bonds or ancillary facilities  
23 outstanding, the authority shall have no authority to file a  
24 voluntary petition under chapter 9 of the federal bankruptcy code  
25 or such corresponding chapter or sections as may, from time to  
26 time, be in effect, and neither any public officer or any  
27 organization, entity, or other person shall authorize the authority

1 to be or become a debtor under chapter 9 of the federal bankruptcy  
2 code or any successor or corresponding chapter or sections during  
3 that period. The state hereby covenants with the owners of the  
4 bonds and benefited parties that this state will not limit or alter  
5 the denial of the authority under this subsection during the period  
6 referred to in this subsection. The authority is authorized and  
7 directed to include this covenant as an agreement of this state in  
8 any contract with the owners of the bonds and benefited parties.

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

27       Sec. 13. The authority may be dissolved by act of the

1 legislature on condition that the authority has no debts or  
2 obligations outstanding or that provision has been made for the  
3 payment or retirement of all debts or obligations. Upon any such  
4 dissolution of the authority, all property, funds, and assets of  
5 the authority shall be vested in this state.

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

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

27       Sec. 16. The authority shall submit an annual report no later

1 than March 1 relating to its activities for the preceding calendar  
2 year to the governor, the speaker and minority leader of the house  
3 of representatives, and the majority and minority leaders of the  
4 senate.

5 Sec. 17. (1) One million dollars is appropriated from the  
6 general fund to the authority for the fiscal year ending September  
7 30, 2006 for all of the following purposes:

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

9 (b) Funding any reserve requirements.

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

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

21 Sec. 19. This act is declared to be severable. If any portion  
22 of this act or the application of this act to any person or  
23 circumstances is found to be invalid by a court, the invalidity of  
24 that portion or application shall not affect the remaining portions  
25 or applications that can be given effect without the invalid  
26 portion or application, provided the remaining portions are not  
27 determined by the court to be inoperable.

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

4       (a) Senate Bill No. 533.

5       (b) House Bill No. 5047.

6       (c) House Bill No. 5109.