

HOUSE BILL No. 5048

July 6, 2005, Introduced by Reps. Huizenga and Dillon and referred to the Committee on Commerce.

A bill to create the Michigan tobacco settlement securitization authority; to create funds and accounts; to provide for the transfer of state assets to the authority; to authorize the issuing of bonds and notes; to prescribe the powers and duties of the authority; and to make an appropriation.

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 securitization authority act".

3 Sec. 2. As used in this act:

4 (a) "Authority" means the Michigan tobacco settlement
5 securitization authority created under section 3.

6 (b) "Board" means the board of directors of the authority.

7 (c) "Bond" means a bond, note, or other obligation issued by
8 the authority under this act.

1 (d) "Fund" or "tobacco settlement securitization fund" means
2 the tobacco settlement securitization fund established under
3 section 9.

4 (e) "Master settlement agreement" means that term as defined
5 in section 1 of 1999 PA 244, MCL 445.2051.

6 (f) "Person" means an individual, corporation, limited or
7 general partnership, association, joint venture, limited liability
8 company, or a governmental entity, including the state of Michigan.

9 (g) "Sale agreement" means 1 or more agreements authorized
10 under this act in which this state provides for the true sale of
11 TSRs to the authority.

12 (h) "Tobacco settlement receipts" means all tobacco settlement
13 payments that are received by this state that are required to be
14 made, pursuant to the terms of the master settlement agreement, by
15 tobacco manufacturers to this state and this state's rights to
16 receive those tobacco settlement payments.

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

20 (j) "Unencumbered tobacco revenues" means that portion of the
21 TSRs that is not subject to the pledge of the applicable
22 resolution, trust agreement, or trust indenture by the authority to
23 the repayment of any bonds issued pursuant to the terms of the
24 applicable resolution, trust agreement, or trust indenture.

25 Sec. 3. (1) The Michigan tobacco settlement securitization
26 authority is created as a public body corporate and politic within
27 the department of treasury.

1 (2) Three fourths of all future tobacco settlement receipts
2 are transferred to the authority, for value, under the terms of the
3 sale agreement as determined by the state treasurer.

4 (3) Any sale of TSRs to the authority under a sale agreement
5 shall be treated as a true sale and absolute transfer of the
6 property transferred and not as a pledge or other security interest
7 for any borrowing. The characterization of the sale as an absolute
8 transfer by the participants shall not be negated or adversely
9 affected by the fact that only a portion of the state's tobacco
10 receipts is transferred, nor by the acquisition or retention by the
11 state of a residual interest.

12 (4) On and after the effective date of each sale of TSRs, this
13 state shall have no right, title, or interest in or to the TSRs
14 sold, and the TSRs sold shall be the property of the authority and
15 not of this state, and shall be owned, received, held, and
16 disbursed by the authority and not this state. On or before the
17 effective date of a sale described in this subsection, this state
18 through the attorney general shall notify the escrow agent under
19 the master settlement agreement that the TSRs have been sold to the
20 authority and irrevocably instruct the escrow agent that, after
21 that date, those TSRs are to be paid directly to the authority or
22 the trustee under the applicable resolution, trust agreement, or
23 trust indenture for the benefit of the owners of the bonds and
24 benefited parties until the bonds are no longer outstanding.
25 Thereafter, any officer or agent of this state who shall receive
26 any TSRs shall hold those TSRs in trust for the authority or the
27 trustee, as applicable, and shall promptly remit the TSRs to the

1 authority or the trustee, as applicable.

2 (5) The unencumbered tobacco revenues shall be distributed as
3 provided by law.

4 Sec. 4. The authority shall exercise its duties independently
5 of the state treasurer. The budgeting, procurement, and related
6 administrative functions of the authority shall be performed under
7 the direction and supervision of the state treasurer.

8 Sec. 5. (1) The authority shall exercise its duties through
9 its board of directors.

10 (2) The board shall be made up of the following members:

11 (a) The state treasurer.

12 (b) The president and CEO of the Michigan economic development
13 corporation.

14 (c) Three members with knowledge, skill, or experience in the
15 business or financial fields appointed by the governor with the
16 advice and consent of the senate. The appointed members shall serve
17 for terms of 4 years. Of the 3 members first appointed, 1 shall be
18 appointed for an initial term of 1 year, 1 shall be appointed for
19 an initial term of 2 years, and 1 shall be appointed for an initial
20 term of 3 years. The appointed members shall serve until a
21 successor is appointed. A vacancy shall be filled for the balance
22 of the unexpired term in the same manner as the original
23 appointment.

24 (3) The chief executive officer or director of any state
25 department or agency who is a designated member of the board may
26 appoint a representative to serve in his or her absence.

27 (4) Members of the board may serve without compensation but

1 may receive reasonable reimbursement for necessary travel and
2 expenses incurred in the discharge of their duties.

3 (5) The governor shall designate 1 member of the board to
4 serve as its chairperson who shall serve at the pleasure of the
5 governor.

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

14 (7) A record or portion of a record, material, information, or
15 other data received, prepared, used, or retained by the authority
16 in connection with the securitization of tobacco settlement revenue
17 and issuance of tobacco bonds that relates to trade secrets,
18 commercial, financial, or proprietary information submitted by the
19 applicant, and which is requested in writing by the applicant and
20 acknowledged in writing by the president of the authority to be
21 confidential, is not subject to the freedom of information act,
22 1976 PA 442, MCL 15.231 to 15.246. As used in this subsection,
23 "trade secrets, commercial, financial, or proprietary information"
24 means information that has not been publicly disseminated or which
25 is unavailable from other sources, the release of which might cause
26 the applicant significant competitive harm.

27 (8) The authority may employ or contract for legal, financial,

1 and technical experts, and other officers, agents, and employees,
2 permanent and temporary, as the authority requires, and shall
3 determine their qualifications, duties, and compensation. The board
4 may delegate to 1 or more agents or employees those powers or
5 duties with such limitations as the board considers proper.

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

9 (10) A member of the board or officer, employee, or agent of
10 the authority shall discharge the duties of his or her position in
11 a nonpartisan manner, with good faith, and with that degree of
12 diligence, care, and skill which an ordinarily prudent person would
13 exercise under similar circumstances in a like position. In
14 discharging the duties, a member of the board or an officer,
15 employee, or agent, when acting in good faith, may rely upon the
16 opinion of counsel for the authority, upon the report of an
17 independent appraiser selected with reasonable care by the board,
18 or upon financial statements of the authority represented to the
19 member of the board or officer, employee, or agent of the authority
20 to be correct by the president or the officer of the authority
21 having charge of its books or account, or stated in a written
22 report by a certified public accountant or firm of certified public
23 accountants fairly to reflect the financial condition of the
24 authority.

25 Sec. 6. The powers of the authority shall include all those
26 necessary to carry out and effectuate the purposes of this act,
27 including, but not limited to, all of the following:

1 (a) To create, operate, and maintain a tobacco settlement
2 securitization program.

3 (b) To borrow money and issue bonds to fund operations of the
4 authority and to fund this state.

5 (c) To solicit and accept gifts, grants, and loans from any
6 person.

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

10 (e) To procure insurance against any loss in connection the
11 property, assets, or activities of the authority.

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

15 (g) To make and amend bylaws.

16 (h) To indemnify and procure insurance indemnifying any
17 members of the board of the authority from personal liability by
18 reason of their service as a board member.

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

21 (j) For security for the payment of principal and interest of
22 any bonds, pledge all or any part of the TSRs or other assets.

23 (k) To do anything necessary or convenient to carry out its
24 purposes and exercise the powers expressly granted under this act.

25 Sec. 7. (1) A reserve capital account is created under the
26 jurisdiction and control of the authority and shall be administered
27 by the authority to secure bonds of the authority. The authority

1 shall credit to the reserve capital account tobacco settlement
2 receipts transferred by the state for the reserve capital account,
3 and any other money that is made available to the authority for the
4 purpose of the reserve capital account.

5 (2) In the resolution authorizing the issuance of bonds, the
6 authority may establish a capital reserve fund for the payment of
7 the principal and interest of bonds, for the purchase or redemption
8 of the bonds, or for the payment of a redemption premium required
9 to be paid when the bonds are redeemed before maturity. The
10 authority shall not use a capital reserve fund for an optional
11 purchase or optional redemption of bonds if the use would reduce
12 the total of the money in the capital reserve fund to less than the
13 capital reserve fund requirement established for the fund.

14 (3) In addition to, or in lieu of, depositing money in the
15 reserve capital account or in a capital reserve fund, the authority
16 may obtain or pledge letters of credit, insurance policies, surety
17 bonds, guarantees, or other security arrangements if the security
18 arrangements are approved by the state treasurer. The amount
19 available under letters of credit, insurance policies, surety
20 bonds, guarantees, or other security arrangements pledged to the
21 capital reserve fund shall be credited toward the capital reserve
22 fund requirement for the fund.

23 (4) Income or interest earned by the reserve capital account
24 may be transferred by the authority to other funds or accounts of
25 the authority.

26 (5) Income or interest earned by a capital reserve fund may be
27 transferred by the authority to other funds or accounts of the

1 authority to the extent that the transfer does not reduce the total
2 of the amount of money in the fund below the capital reserve fund
3 requirement for that fund.

4 Sec. 8. The authority shall accumulate in a capital reserve
5 fund an amount equal to the capital reserve fund requirement for
6 that fund. If at any time the amount of a capital reserve fund
7 falls below the capital reserve fund requirement for that fund, the
8 authority shall transfer from the reserve capital account to the
9 capital reserve fund an amount equal to the capital reserve fund
10 requirement. If a deficiency exists in more than 1 capital reserve
11 fund and the amount in the reserve capital account is not
12 sufficient to fully restore the capital reserve funds, the money in
13 the reserve capital account shall be allocated between the
14 deficient capital reserve funds pro rata according to the amounts
15 of the deficiencies. If at any time the reserve capital account has
16 been exhausted and the amount of the capital reserve fund is
17 insufficient to meet the capital reserve fund requirement, the
18 authority on or before September 1 shall certify to the governor
19 the amount necessary to restore the capital reserve fund to an
20 amount equal to the capital reserve fund requirement for that fund.
21 The governor shall include in his or her annual budget the amount
22 certified under this subsection by the authority.

23 Sec. 9. (1) The tobacco settlement securitization fund is
24 created under the jurisdiction and control of the authority.

25 (2) The authority shall credit to the fund any money
26 appropriated by the state for the fund and any other money made
27 available to the authority for the purpose of the fund.

1 Sec. 10. (1) The authority shall have power and is hereby
2 authorized from time to time to issue bonds in the principal amount
3 or amounts as the authority determines to be necessary to provide
4 sufficient funds for achieving its authorized purposes, consisting
5 of the purchase of all or a portion of this state's tobacco
6 receipts under this act and the payment of or provision for
7 financing costs.

8 (2) The authority may issue bonds as provided under this act
9 to do all of the following:

10 (a) Compensate this state for the transfer of the tobacco
11 settlement receipts to the authority as determined under the sale
12 agreement.

13 (b) Pay the interest on bonds of the authority.

14 (c) Establish reserves to secure the bonds.

15 (d) Make other expenditures of the authority necessary to
16 carry out the authority's duties under this act, including the
17 payment of the authority's operating expenses.

18 (3) The authority may issue bonds and refund bonds by the
19 issuance of new bonds, whether or not the bonds to be refunded have
20 matured. The refunding bonds shall be sold and the proceeds applied
21 to the purchase, redemption, or payment of the bonds to be
22 refunded. The authority may issue instruments separate from the
23 obligations described in this subsection that establish a
24 contractual right in the holder of the instrument to require
25 mandatory tender for purchase of the obligations to which the
26 instrument applies for a period of time and subject to provisions
27 as the authority may determine.

1 (4) Except as otherwise provided by the authority or this act,
2 every bond issue of the authority shall be a general obligation of
3 the authority payable out of revenues or money of the authority,
4 subject only to agreements with the holders of particular bonds
5 pledging any particular receipts or revenues.

6 (5) Whether or not bonds are of a form or character as to be
7 negotiable instruments, the bonds are negotiable instruments within
8 the meaning of the uniform commercial code, 1962 PA 174, MCL
9 440.1101 to 440.11102.

10 Sec. 11. (1) The bonds shall be authorized by resolution of
11 the authority and mature at the time provided in the resolution.
12 The bonds shall be in the form, bear interest at a rate or rates,
13 be in the denominations, carry registration privileges, be payable,
14 and be subject to the terms of redemption as provided in the
15 resolution.

16 (2) The bonds of the authority may be sold by the authority at
17 public or private sales at prices as the authority determines.

18 Sec. 12. A resolution relating to authorizing bonds may
19 contain any of the following provisions, which shall be a part of
20 the contract with the holders of the bonds:

21 (a) Pledging all or any part of the revenues of the authority,
22 and all or any part of the money received in payment of loans and
23 interest on loans, and other money received or to be received to
24 secure the payment of the bonds.

25 (b) Pledging all or any part of the assets of the authority,
26 including mortgages and obligations obtained by the authority in
27 connection with its programs, to secure the payment of the bonds.

1 (c) Pledging any loan, grant, or contribution from a
2 government entity.

3 (d) The use and disposition of the gross income from contracts
4 and leases of the authority.

5 (e) The setting aside of reserves or sinking funds and the
6 regulation and disposition of reserves or sinking funds.

7 (f) Limitations on the purpose to which the proceeds of sale
8 of bonds may be applied and pledging proceeds to secure the payment
9 of the bonds.

10 (g) Limitations on the issuance of additional bonds, the terms
11 upon which additional bonds may be issued and secured, and the
12 refunding of outstanding or other bonds.

13 (h) The procedure, if any, by which the terms of any contract
14 with bondholders may be amended or abrogated, the amount of bonds
15 the holders of which shall consent to the amendment or abrogation,
16 and the manner in which the consent is to be given.

17 (i) Vesting in a trustee or trustees property, rights, powers,
18 and duties in trust as the authority may determine, which may
19 include any of the rights, powers, and duties of the trustee
20 appointed by the bondholders under this act and limiting or
21 abrogating the right of the bondholders to appoint a trustee under
22 this section or limiting the rights, powers, and duties of the
23 trustee.

24 (j) Establishing a contractual right to require mandatory
25 tender for purchase of the bonds in an instrument separate from the
26 bonds. The instrument may be issued or sold by the authority to
27 investors.

1 (k) Any other provision that may affect the security or
2 protection of the bonds.

3 (l) Delegating to an officer or other employee of the
4 authority, or an agent designated by the authority, for such period
5 of time as the authority determines, the power to cause the issue,
6 and sale and delivery, of the bonds within limits on those bonds
7 established by the authority as to any of the following:

8 (i) The form.

9 (ii) The maximum interest rate or rates.

10 (iii) The maturity date or dates.

11 (iv) The purchase price.

12 (v) The denominations.

13 (vi) The redemption premiums.

14 (vii) The nature of the security.

15 (viii) The selection of the applicable interest rate index.

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

18 Sec. 13. (1) Any pledge made by the authority is valid and
19 binding from the date that the pledge is made.

20 (2) The money or property pledged and received by the
21 authority shall immediately be subject to the lien of the pledge
22 without any physical delivery or further act and the lien of the
23 pledge is valid and binding against all parties having claims in
24 tort, contract or otherwise against the authority, irrespective of
25 whether the parties have notice of the lien.

26 (3) The resolution or any other instrument by which a pledge
27 is created need not be recorded.

1 Sec. 14. The members of the board or any person executing the
2 bonds under this act are not liable personally on the bonds or
3 subject to any personal liability or accountability by reason of
4 the issuance of the bonds.

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

8 Sec. 16. This state is not liable on bonds of the authority
9 and the bonds are not a debt of this state. The bonds shall contain
10 on their face a statement of the limitation contained under this
11 section.

12 Sec. 17. (1) The state pledges and agrees with the holders of
13 any bonds issued under this act that the state will not limit or
14 alter the rights vested in the authority to fulfill the terms of
15 any agreements made with the holders, or in any way impair the
16 rights and remedies of the holders until the bonds, together with
17 earned interest, with interest on any unpaid installments of
18 interest, and all costs and expenses in connection with any action
19 or proceeding by or on behalf of the holders, are fully met and
20 discharged. The authority is authorized to include this pledge and
21 agreement of the state in any agreement with the holders of bonds
22 under this act.

23 (2) The authority shall not voluntarily file for any
24 bankruptcy protection.

25 Sec. 18. (1) The authority may issue bonds which are expressly
26 stated not to be general obligations of the authority but which
27 constitute limited obligations of the authority payable solely from

1 and secured solely by the revenues, money, and property as the
2 authority may specify.

3 (2) The bonds designated as limited obligations under this
4 section shall not be payable from or secured by the reserve capital
5 account, and any reserve fund established for the limited
6 obligation bonds shall not constitute a capital reserve fund under
7 this act.

8 Sec. 19. If the authority defaults in the payment of principal
9 or interest of any bonds when due, whether at maturity or upon call
10 for redemption, and the default continues for a period of 30 days,
11 or if the authority fails or refuses to comply with this act, or
12 defaults in any agreement made with the holders of any bonds, the
13 holders of 25% in aggregate principal amount of the bonds then
14 outstanding may apply to the circuit court of Ingham county for the
15 appointment of a trustee to represent the holders of the bonds.

16 Sec. 20. (1) Money of the authority shall be held by the
17 authority and deposited in a financial institution approved by the
18 state treasurer any such financial institution may give security
19 for the deposits.

20 (2) The authority may, subject to the approval of the state
21 treasurer, contract with the holders of any of its bonds as to the
22 custody, collection, securing, investment, and payment of money of
23 the authority, of any money held in trust or otherwise for the
24 payment of bonds, and to carry out the contract. Money held in
25 trust or otherwise for the payment of bonds or in any way to secure
26 bonds and deposits of money may be secured in the same manner as
27 money of the authority.

1 (3) The authority may enter into an interest rate exchange or
2 swap, hedge, or similar agreement or agreements in connection with
3 the issuance of its bonds or in connection with its then
4 outstanding bonds.

5 Sec. 21. The bonds of the authority are securities in which
6 public officers and bodies of the state and municipalities and
7 municipal subdivisions, insurance companies and associations and
8 other persons carrying on an insurance business, banks, trust
9 companies, savings banks and savings associations, savings and loan
10 associations, investment companies, administrators, guardians,
11 executors, trustees and other fiduciaries, and any other person who
12 is now or may be authorized to invest in bonds or other obligations
13 of the state, may properly and legally invest funds, including
14 capital, in their control or belonging to them.

15 Sec. 22. The state covenants with the purchasers and all
16 subsequent holders and transferees of bonds issued by the
17 authority, in consideration of the acceptance of and payment for
18 the bonds, that the bonds of the authority, issued under this act
19 and the income from the bonds and all its fees, charges, gifts,
20 grants, revenues, receipts, and other money received or to be
21 received, pledged to pay or secure the payment of the bonds shall
22 at all times be free and exempt from all state, city, county, or
23 other taxation provided by the laws of the state, except for estate
24 and gift taxes and taxes on transfers.

25 Sec. 23. The property of the authority and its income and
26 operation are exempt from all taxation by the state or any of its
27 political subdivisions.

1 Sec. 24. The authority shall submit an annual report no later
2 than March 1 relating to its activities for the preceding calendar
3 year to the governor, the speaker of the house of representatives,
4 and the majority leader of the senate.