

HOUSE BILL No. 5866

March 6, 2008, Introduced by Reps. Brown, Ebli, Lemmons, Condino, Espinoza, Valentine, Simpson, Corriveau, Angerer, Lindberg and Dean and referred to the Committee on Tourism, Outdoor Recreation and Natural Resources.

A bill to amend 2005 PA 226, entitled "Michigan tobacco settlement finance authority act," by amending section 8 (MCL 129.268), as amended by 2007 PA 18.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8. (1) The state budget director with the approval of the
2 state administrative board may sell to the authority, and the
3 authority may purchase, for cash or other consideration and in 1 or
4 more installments, all or a portion of the state's tobacco receipts
5 pursuant to the terms of 1 or more sale agreements. In the
6 alternative, the state budget director with the approval of the
7 state administrative board may sell all or a portion of the state's
8 tobacco receipts for cash or other consideration to a person or
9 persons other than the authority, if the terms of the sale

1 agreement to sell the state's tobacco receipts are in the best
2 interests of this state and the net proceeds of the sale will not
3 exceed \$400,000,000.00. If the sale to a person or persons other
4 than the authority is in the best interests of this state, the
5 state administrative board shall approve the terms of the sale
6 agreement. The sale agreement or combined sale agreements shall
7 provide for the sale of that portion of the state's tobacco
8 receipts sufficient to provide net proceeds to the state in the
9 amount of \$815,000,000.00, of which \$400,000,000.00 shall be
10 deposited to and held, used, and expended by the state treasurer in
11 the manner provided for in the Michigan trust fund act, 2000 PA
12 489, MCL 12.251 to ~~12.256~~ 12.260, \$207,800,000.00 shall be
13 deposited in the state school aid fund established by section 11 of
14 article IX of the state constitution of 1963, and the balance shall
15 be deposited in the general fund.

16 (2) A SALE AGREEMENT OR COMBINED SALE AGREEMENT UNDER THIS
17 SECTION MAY ALSO PROVIDE FOR REFUNDING, REFINANCING, AND THE SALE
18 BY THIS STATE OF RESIDUAL INTERESTS. ANY NET PROCEEDS RESULTING
19 FROM A REFUNDING OR REFINANCING OF BONDS ISSUED UNDER THIS ACT
20 PRIOR TO THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
21 SUBSECTION OR THE SALE OF RESIDUAL INTERESTS EXISTING ON OR AFTER
22 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION
23 SHALL BE DEPOSITED TO AND HELD, USED, AND EXPENDED BY THE STATE
24 TREASURER IN THE MANNER PROVIDED FOR IN THE MICHIGAN TRUST FUND
25 ACT, 2000 PA 489, MCL 12.251 TO 12.260.

26 (3) ~~(2)~~ Any sale agreement shall provide that the purchase
27 price payable by the authority to the state for TSRs shall consist

1 of the net proceeds and the residual interests, if any. In
2 addition, any sale shall be pursuant to 1 or more sale agreements
3 that may contain the terms and conditions considered appropriate by
4 the state budget director to carry out and effectuate the purposes
5 of this section, including without limitation covenants binding
6 this state in favor of the authority and its assignees, including
7 without limitation the owners of the bonds and benefited parties,
8 including a requirement that the state enforce the provisions of
9 the master settlement agreement that require the payment of the
10 TSRs, a requirement that the state enforce the provisions of the
11 qualifying statute, a provision authorizing inclusion of the
12 state's pledge and agreement, as set forth in section 11, in any
13 agreement with owners of the bonds or any benefited parties, and
14 covenants with respect to the application and use of the proceeds
15 of the sale of the state's tobacco receipts to preserve the tax
16 exemption of the interest on any bonds, if issued as tax-exempt.
17 The state budget director in any sale agreement may agree to, and
18 the authority may provide for, the assignment of the authority's
19 right, title, and interest under the sale agreement for the benefit
20 and security of the owners of bonds and benefited parties.

21 (4) ~~(3)~~—A sale agreement may provide that the remedies
22 available to the authority and the bondholders for any breach of
23 the pledges and agreements of this state set forth in subsection
24 ~~(2)~~—(3) shall be limited to injunctive relief and that this state
25 shall be considered to have diligently enforced the qualifying
26 statute if there has been no judicial determination by a court of
27 competent jurisdiction in this state, in an action commenced by a

1 participating tobacco manufacturer under the master settlement
2 agreement, that this state has failed to diligently enforce the
3 qualifying statute.

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

17 (6) ~~(5)~~—A sale of all or a portion of the state's tobacco
18 receipts to the authority under a sale agreement shall be treated
19 as a true sale and absolute transfer of the state's tobacco
20 receipts transferred and not as a pledge or other security interest
21 for any borrowing. A sale agreement that expressly states that the
22 transfer of all or a portion of the state's tobacco receipts to the
23 authority is a sale or other absolute transfer signifies that the
24 transaction is a true sale and is not a secured transaction and
25 that title, legal and equitable, has passed to the authority. The
26 characterization of a sale as an absolute transfer by the
27 participants shall not be negated or adversely affected by the fact

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

16 (7) ~~(6)~~—On and after the effective date of each sale of TSRs,
17 the 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 treasurer 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 bonds 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 TSRs shall hold them in trust for the
8 authority or the trustee, as applicable, and shall promptly remit
9 the same to the authority or the trustee, as applicable.

10 (8) ~~(7)~~—The net proceeds and any earnings on the net proceeds
11 shall never be pledged to, or made available for, payment of the
12 bonds or ancillary facilities or any interest or redemption price
13 or any other debt or obligation of the authority.