

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5866**

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 AGREEMENTS UNDER THIS**
17 **SECTION MAY ALSO PROVIDE FOR REFUNDING, REFINANCING, AND THE SALE**
18 **BY THIS STATE OF RESIDUAL INTERESTS SUFFICIENT TO PROVIDE NET**
19 **PROCEEDS TO THE STATE IN THE AMOUNT OF \$60,000,000.00. ANY NET**
20 **PROCEEDS RESULTING FROM A REFUNDING OR REFINANCING OF BONDS ISSUED**
21 **UNDER THIS ACT PRIOR TO THE EFFECTIVE DATE OF THE AMENDATORY ACT**
22 **THAT ADDED THIS SUBSECTION OR THE SALE OF RESIDUAL INTERESTS**
23 **EXISTING ON OR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT**
24 **ADDED THIS SUBSECTION SHALL BE DEPOSITED IN THE GENERAL FUND.**

25 **(3) ~~(2)~~ Any sale agreement shall provide that the purchase**
26 **price payable by the authority to the state for TSRs shall consist**
27 **of the net proceeds and the residual interests, if any. In**

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

20 (4) ~~(3)~~—A sale agreement may provide that the remedies
21 available to the authority and the bondholders for any breach of
22 the pledges and agreements of this state set forth in subsection
23 ~~(2)~~—(3) shall be limited to injunctive relief and that this state
24 shall be considered to have diligently enforced the qualifying
25 statute if there has been no judicial determination by a court of
26 competent jurisdiction in this state, in an action commenced by a
27 participating tobacco manufacturer under the master settlement

1 agreement, that this state has failed to diligently enforce the
2 qualifying statute.

3 (5) ~~(4)~~—The approval of the state administrative board shall
4 be made by a resolution adopted by the state administrative board
5 and that approval together with the sale agreement made pursuant to
6 that approval shall be conclusively presumed to be valid for all
7 purposes unless challenged in an action brought in the court of
8 appeals within 30 days after the adoption of the resolution. All
9 challenges shall be heard and determined as expeditiously as
10 possible with lawful precedence over other matters. Consideration
11 by the court of appeals shall be based solely on the record before
12 the state administrative board and briefs to the court shall be
13 limited to whether the resolution conforms to the constitution and
14 laws of this state and the United States and is within the
15 authority of the state administrative board under this act.

16 (6) ~~(5)~~—A sale of all or a portion of the state's tobacco
17 receipts to the authority under a sale agreement shall be treated
18 as a true sale and absolute transfer of the state's tobacco
19 receipts transferred and not as a pledge or other security interest
20 for any borrowing. A sale agreement that expressly states that the
21 transfer of all or a portion of the state's tobacco receipts to the
22 authority is a sale or other absolute transfer signifies that the
23 transaction is a true sale and is not a secured transaction and
24 that title, legal and equitable, has passed to the authority. The
25 characterization of a sale as an absolute transfer by the
26 participants shall not be negated or adversely affected by the fact
27 that only a portion of the state's tobacco receipts are

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

15 (7) ~~(6)~~—On and after the effective date of each sale of TSRs,
16 the state shall have no right, title, or interest in or to the TSRs
17 sold, and the TSRs sold shall be property of the authority and not
18 of this state, and shall be owned, received, held, and disbursed by
19 the authority and not this state. On or before the effective date
20 of a sale described in this subsection, this state through the
21 state treasurer shall notify the escrow agent under the master
22 settlement agreement that this state has sold all or a portion of
23 the state's tobacco receipts to the authority, including, if
24 applicable, a statement as to the percentage sold and shall
25 irrevocably instruct the escrow agent that, subsequent to the date
26 specified in the notice, that portion of the state's tobacco
27 receipts are to be paid directly to the authority or the trustee

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

9 **(8)** ~~(7)~~—The net proceeds and any earnings on the net proceeds
10 shall never be pledged to, or made available for, payment of the
11 bonds or ancillary facilities or any interest or redemption price
12 or any other debt or obligation of the authority.