

# HOUSE BILL No. 4718

March 26, 2009, Introduced by Rep. Kennedy and referred to the Committee on Tax Policy.

A bill to amend 2005 PA 226, entitled "Michigan tobacco settlement finance authority act," by amending sections 5 and 8 (MCL 129.265 and 129.268), section 8 as amended by 2008 PA 101.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 5. The authority shall exercise its duties  
2 independently of the state treasurer. ~~The~~**HOWEVER, THE** staffing,  
3 budgeting, procurement, and related administrative functions of the  
4 authority shall be performed under the direction and supervision of  
5 the state treasurer.

6           Sec. 8. (1) The state budget director with the approval of the  
7 state administrative board may sell to the authority, and the  
8 authority may purchase, for cash or other consideration and in 1 or

1 more installments, all or a portion of the state's tobacco receipts  
2 pursuant to the terms of 1 or more sale agreements. In the  
3 alternative, the state budget director with the approval of the  
4 state administrative board may sell all or a portion of the state's  
5 tobacco receipts for cash or other consideration to a person or  
6 persons other than the authority, if the terms of the sale  
7 agreement to sell the state's tobacco receipts are in the best  
8 interests of this state and the net proceeds of the sale will not  
9 exceed \$400,000,000.00. If the sale to a person or persons other  
10 than the authority is in the best interests of this state, the  
11 state administrative board shall approve the terms of the sale  
12 agreement. The sale agreement or combined sale agreements shall  
13 provide for the sale of that portion of the state's tobacco  
14 receipts sufficient to provide net proceeds to the state in the  
15 amount of ~~\$815,000,000.00~~ **\$816,000,000.00**, of which \$400,000,000.00  
16 shall be deposited to and held, used, and expended by the state  
17 treasurer in the manner provided for in the Michigan trust fund  
18 act, 2000 PA 489, MCL 12.251 to 12.260, \$207,800,000.00 shall be  
19 deposited in the state school aid fund established by section 11 of  
20 article IX of the state constitution of 1963, and the balance shall  
21 be deposited in the general fund.

22 (2) A sale agreement or combined sale agreements under this  
23 section may also provide for refunding, refinancing, and the sale  
24 by this state of residual interests sufficient to provide net  
25 proceeds to the state in the amount of \$60,000,000.00. Any net  
26 proceeds resulting from a refunding or refinancing of bonds issued  
27 under this act prior to the effective date of the amendatory act

1 that added this subsection or the sale of residual interests  
2 existing on or after the effective date of the amendatory act that  
3 added this subsection shall be deposited in the general fund.

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

26 (4) A sale agreement may provide that the remedies available  
27 to the authority and the bondholders for any breach of the pledges

1 and agreements of this state set forth in subsection (3) shall be  
2 limited to injunctive relief and that this state shall be  
3 considered to have diligently enforced the qualifying statute if  
4 there has been no judicial determination by a court of competent  
5 jurisdiction in this state, in an action commenced by a  
6 participating tobacco manufacturer under the master settlement  
7 agreement, that this state has failed to diligently enforce the  
8 qualifying statute.

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

22 (6) A sale of all or a portion of the state's tobacco receipts  
23 to the authority under a sale agreement shall be treated as a true  
24 sale and absolute transfer of the state's tobacco receipts  
25 transferred and not as a pledge or other security interest for any  
26 borrowing. A sale agreement that expressly states that the transfer  
27 of all or a portion of the state's tobacco receipts to the

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

21 (7) On and after the effective date of each sale of TSRs, the  
22 state shall have no right, title, or interest in or to the TSRs  
23 sold, and the TSRs sold shall be property of the authority and not  
24 of this state, and shall be owned, received, held, and disbursed by  
25 the authority and not this state. On or before the effective date  
26 of a sale described in this subsection, this state through the  
27 state treasurer shall notify the escrow agent under the master

1 settlement agreement that this state has sold all or a portion of  
2 the state's tobacco receipts to the authority, including, if  
3 applicable, a statement as to the percentage sold and shall  
4 irrevocably instruct the escrow agent that, subsequent to the date  
5 specified in the notice, that portion of the state's tobacco  
6 receipts are to be paid directly to the authority or the trustee  
7 under the applicable authority resolution, trust agreement, or  
8 trust indenture for the benefit of the owners of the bonds and  
9 benefited parties until the authority's bonds and ancillary  
10 facilities are no longer outstanding. Once the bonds or ancillary  
11 facilities are no longer outstanding, an officer or agent of this  
12 state who shall receive any TSRs shall hold them in trust for the  
13 authority or the trustee, as applicable, and shall promptly remit  
14 the same to the authority or the trustee, as applicable.

15 (8) The net proceeds and any earnings on the net proceeds  
16 shall never be pledged to, or made available for, payment of the  
17 bonds or ancillary facilities or any interest or redemption price  
18 or any other debt or obligation of the authority.

19 Enacting section 1. This amendatory act does not take effect  
20 unless all of the following bills of the 95th Legislature are  
21 enacted into law:

22 (a) Senate Bill No. \_\_\_\_ or House Bill No. 4716 (request no.  
23 02788'09).

24 (b) Senate Bill No. \_\_\_\_ or House Bill No. 4719 (request no.  
25 02892'09).

26 (c) Senate Bill No. \_\_\_\_ or House Bill No. 4717 (request no.  
27 02893'09).

1 (d) Senate Bill No. \_\_\_\_\_ or House Bill No. 4720 (request no.  
2 02894'09).