MICHIGAN TOBACCO SETTLEMENT FINANCE AUTHORITY ACT
Act 226 of 2005

AN ACT 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.

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

The People of the State of Michigan enact:

129.261 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan tobacco settlement finance authority act".

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

129.262 Legislative findings and declaration.

Sec. 2. The legislature finds and declares the following:

(a) This state has entered into a master settlement agreement with major tobacco companies that should result in the state receiving substantial sums of money in perpetuity assuming no adverse changes in cigarette consumption, market share, financial condition of those tobacco companies, and changes in law.

(b) The master settlement agreement is a binding and enforceable agreement of this state.

(c) Selling the state's right to receive all or a portion of tobacco settlement payments is a prudent method of managing the risks associated with reliance on the receipt of tobacco settlement payments in perpetuity.

(d) Establishing the authority and execution by the authority of its powers granted under this act fulfill in all respects a public and governmental purpose for the benefit of the people of this state.

(e) The exchange of net proceeds received by the authority from the issuance of bonds plus residual interests for the right to receive all or a portion of tobacco settlement payments constitutes a true sale for a fair price.

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

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129.263 Definitions.

Sec. 3. As used in this act:

(a) "Ancillary facility" means any revolving credit agreement, agreement establishing a line of credit or letter of credit, reimbursement agreement, interest rate exchange or similar agreement, currency exchange agreement, interest rate floor or cap, options, puts or calls to hedge payment, currency, rate, spread or similar exposure, or similar agreements, investment agreements, float agreements, forward agreements or other investment arrangements, insurance contract, surety bond, commitment to purchase or sell securities, purchase or sale agreements or commitments or other contracts or agreements and other security agreements approved by the authority, including without limitation any arrangements referred to in this act.

(b) "Authority" means the Michigan tobacco settlement finance authority created under section 4.

(c) "Benefited parties" means persons, firms, or corporations that enter into ancillary facilities with the authority according to the provisions of this act.

(d) "Board" means the board of directors of the authority.

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

(f) "Code" means the United States internal revenue code of 1986, as amended, and any successor provision of law.

(g) "Encumbered tobacco revenues" means that portion of the TSRs that is pledged by the authority to the repayment of any bonds under the terms of the applicable authority resolution, trust agreement, or trust indenture.

(h) "Federal bankruptcy code" means the federal bankruptcy code, 11 USC 101 to 1330.

(i) "Financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office in this state under the laws of this state or the United States.

(j) "Financing costs" means all capitalized interest, operating and debt service reserves, costs of issuance, fees for credit and liquidity enhancements, any item of expense directly or indirectly payable or reimbursable

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by the authority and related to the authorization, sale, or issuance of bonds, including without limitation underwriting fees, counsel fees, fees of the attorney general and fees and expenses of consultants and fiduciaries, and other costs as the authority determines to be desirable in issuing, securing, and marketing the bonds.

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

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

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

(n) "Operating expenses" means the reasonable operating expenses of the authority, including without limitation the cost of preparation of accounting and other reports, costs of maintenance of the ratings on the bonds, insurance premiums, and costs of authority meetings or other required activities of the authority, counsel fees, including the fees of the attorney general, and fees and expenses incurred for consultants and fiduciaries and any other costs described in section 4(12).

(o) "Outstanding" means, when used with respect to bonds, all bonds other than bonds that shall have been paid in full at maturity or that may be considered not outstanding under the applicable authority resolution, trust indenture or trust agreement authorizing the issuance of the bonds and when used with respect to ancillary facilities, all ancillary facilities other than ancillary facilities that have been paid in full or that may be considered not outstanding under such ancillary facilities.

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

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

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

(*i*) The unencumbered tobacco revenues.

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

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

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

(s) "Sale agreement" means any agreement authorized under this act in which this state provides for the sale of all or a portion of the state's tobacco receipts under section 8.

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

(u) "State's tobacco receipts" means:

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

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

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

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

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

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

129.264 Michigan tobacco settlement finance authority; creation; separate legal entity; issuance of bonds generally.

Sec. 4. (1) The Michigan tobacco settlement finance authority is created as a public body corporate and

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politic within the department of treasury. The authority is a state institution within the meaning of section 9 of article II of the state constitution of 1963 and an instrumentality of this state exercising public and essential governmental functions. The exercise by the authority of the powers conferred by this act is an essential governmental function of this state.

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

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

(4) The board of the authority shall authorize the issuance of bonds by resolution. The authority may issue bonds, including refunding bonds, without obtaining the consent of any department, division, commission, board, bureau, or agency of this state and without any other proceedings or the occurrence of any other conditions other than those proceedings, conditions, or things that are specifically required by this act. Every issue of bonds shall be special revenue obligations payable from and secured by a pledge of encumbered tobacco revenues and other assets, including without limitation the proceeds of the bonds deposited in a reserve fund for the benefit of the owners of the bonds, earnings on funds of the authority and other funds as may become available, upon the terms and conditions as specified by the authority in the authority resolution under which the bonds are issued or in a related trust agreement or trust indenture.

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

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

(a) The date of issuance.

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

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

(d) When the bonds shall mature.

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

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

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

(h) If any officer whose signature or the facsimile of whose signature appears on any bond shall cease to be that officer before the delivery of the bond, that signature or facsimile shall nevertheless be valid and sufficient for all purposes as if he or she had remained in office until delivery of the bond.

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

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

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

(9) This act shall also govern the negotiability of bonds issued under this act. Any bonds issued under this act shall be fully negotiable within the meaning and for all purposes of the uniform commercial code. By accepting the bond or obligation, each owner of a bond or other obligation of the authority shall be conclusively considered to have agreed that the bond is and shall be fully negotiable within the meaning and for all purposes of the uniform commercial code.

(10) In the discretion of the authority, any bonds and any ancillary facilities may be secured by a trust agreement or trust indenture by and between the authority and a trustee, which may be any trust company or bank having the powers of a trust company, whether located within or without this state. A trust agreement or

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trust indenture authorized under this subsection, or an authority resolution providing for the issuance of bonds may provide for the creation and maintenance of reserves as the authority shall determine to be proper and may include covenants setting forth the duties of the authority in relation to the bonds, the ancillary facilities, the income to the authority, the sale agreement, the encumbered tobacco revenues and residual interests. A trust agreement or trust indenture authorized under this subsection or an authority resolution may contain provisions respecting the custody, safeguarding, and application of all money and bonds and may contain provisions for protecting and enforcing the rights and remedies under the sale agreement of the owners of the bonds and benefited parties as may be reasonable and proper and not in violation of law. It shall be lawful for any bank or trust company incorporated under the laws of this state that may act as depository of the proceeds of bonds or of any other funds or obligations received on behalf of the authority to furnish indemnifying bonds or to pledge obligations as may be required by the authority. Any trust agreement or trust indenture authorized under this subsection or an authority resolution may contain other provisions as the authority may consider reasonable and proper for priorities and subordination among the owners of bonds and benefited parties.

(11) The authority may enter into, amend, or terminate, as it determines to be necessary or appropriate, any ancillary facilities for any of the following purposes:

(a) To facilitate the issuance, sale, resale, purchase, repurchase, or payment of bonds, or the making or performance of swap contracts, including without limitation bond insurance, letters of credit, and liquidity facilities.

(b) To attempt to hedge risk or achieve a desirable effective interest rate or cash flow.

(12) The authority may enter into, amend, or terminate any ancillary facility as it determines to be necessary or appropriate to place the obligations or investments of the authority, as represented by the bonds or the investment of their proceeds, in whole or in part, on the interest rate, cash flow, or other basis desired by the authority, which facility may include without limitation contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. The authority may enter into these contracts or arrangements in connection with, or incidental to, entering into, or maintaining any agreement that secures bonds of the authority or any investment, or contract providing for investments, of reserves or similar facility guaranteeing an investment rate for a period of years.

(13) The determination by the authority that an ancillary facility or the amendment or termination of an ancillary facility is necessary or appropriate is conclusive. The authority may determine the terms and conditions of an ancillary facility, including without limitation provisions as to security, default, termination, payments, remedy, and consent to service of process.

(14) Bonds and ancillary facilities may contain a recital that they are issued pursuant to this act, which recital is conclusive evidence of the validity of the bonds and any ancillary facility and the regularity of the proceedings relating to the bonds and ancillary facilities.

(15) A member of the board or an officer, appointee, or employee of the authority shall not be subject to personal liability when acting in good faith within the scope of his or her authority or on account of liability of the authority. The board may defend and indemnify a member of the board or an officer, appointee, or employee of the authority against liability arising out of the discharge of his or her official duties. The authority may indemnify and procure insurance indemnifying members of the board and other officers and employees of the authority from personal loss or accountability for liability asserted by a person with regard to bonds or other obligations of the authority, or from any personal liability or accountability by reason of the issuance of the bonds or other obligations or by reason of any other action taken or the failure to act by the authority. The authority may also purchase and maintain insurance on behalf of any person against the liability asserted against the person and incurred by the person in any capacity or arising out of the status of the person as a member of the board or an officer or employee of the authority, whether or not the authority would have the power to indemnify the person against that liability under this subsection.

(16) A member, officer, employee or agent of the authority shall not have an interest, either directly or indirectly, in any business organization engaged in any business, contract or transaction with the authority or in any contract of any other person engaged in any business with the authority, or in the purchase, sale, lease or transfer of any property to or from the authority.

(17) Bonds issued under this act are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(18) The issuance of bonds under this act is subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

(19) A resolution of the authority authorizing bonds, or the provisions of a trust agreement or trust indenture authorized by resolution of the authority, may delegate to an officer or other employee of the authority, or an agent designated by the authority, for the period of time as the authority determines, the

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power to cause the issue, sale, and delivery of the bonds within limits on those bonds established by the authority as to any of the following:

(a) The form.

(b) The maximum interest rate or rates.

(c) The maturity date or dates.

(d) The purchase price.

(e) The denominations.

(f) The redemption premiums.

(g) The nature of the security.

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

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

(20) The board shall rotate bond counsel when issuing bonds under this act. The board shall authorize and issue bonds in a manner that provides that not less than 2 financial institutions or brokerage firms are involved in marketing and underwriting the bonds. Not less than 1 of the 2 financial institutions or brokerage firms described in this subsection shall meet all of the following:

(a) Be chartered in this state.

(b) Have 1/3 or more of its branch offices located in this state.

(c) Have 25% or more of its employees located in this state.

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

Compiler's note: For transfer of powers and duties of Michigan tobacco settlement finance authority, and its board of directors, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 124.194.

129.265 Authority; duties; administrative functions.

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

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

129.266 Board of directors; membership; terms; vacancy; compensation; reimbursement; chairperson; quorum; vote; agents and employees; discharge of duties by member, officer, employee, or agent; independent public financial advisor.

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

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

(a) The state treasurer.

(b) The director of the department of labor and economic growth.

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

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

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

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

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

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

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

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

(8) The authority may employ or contract for legal, financial, and technical experts, and other officers, agents, and employees, permanent and temporary, as the authority requires, and shall determine their qualifications, duties, and compensation. The board may delegate to 1 or more agents or employees those

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powers or duties with the limitations as the board considers proper.

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

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

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

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

Compiler's note: For abolishment of board of directors of Michigan tobacco settlement finance authority, see E.R.O. No. 2010-2, compiled at MCL 124.194.

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129.267 Powers of authority.

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

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

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

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

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

(e) To make and amend bylaws.

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

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

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

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

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

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

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

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

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

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History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

129.268 Sale of state's tobacco receipts; terms; agreement; refunding, refinancing, and sale of residual interests; purchase price; remedies; approval by resolution adopted by state administrative board; absolute transfer; limitation on use of net proceeds and earnings.

Sec. 8. (1) The state budget director with the approval of the state administrative board may sell to the authority, and the authority may purchase, for cash or other consideration and in 1 or more installments, all or a portion of the state's tobacco receipts pursuant to the terms of 1 or more sale agreements. In the alternative, the state budget director with the approval of the state administrative board may sell all or a portion of the state's tobacco receipts for cash or other consideration to a person or persons other than the authority, if the terms of the sale agreement to sell the state's tobacco receipts are in the best interests of this state and the net proceeds of the sale will not exceed $400,000,000.00. If the sale to a person or persons other than the authority is in the best interests of this state, the state administrative board shall approve the terms of the sale agreement. The sale agreement or combined sale agreements shall provide for the sale of that portion of the state’s tobacco receipts sufficient to provide net proceeds to the state in the amount of $815,000,000.00, of which $400,000,000.00 shall be deposited to and held, used, and expended by the state treasurer in the manner provided for in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, $207,800,000.00 shall be deposited in the state school aid fund established by section 11 of article IX of the state constitution of 1963, and the balance shall be deposited in the general fund.

(2) A sale agreement or combined sale agreements under this section may also provide for refunding, refinancing, and the sale by this state of residual interests sufficient to provide net proceeds to the state in the amount of $60,000,000.00. Any net proceeds resulting from a refunding or refinancing of bonds issued under this act prior to the effective date of the amendatory act that added this subsection or the sale of residual interests existing on or after the effective date of the amendatory act that added this subsection shall be deposited in the general fund.

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

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

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

(6) A sale of all or a portion of the state’s tobacco receipts to the authority under a sale agreement shall be treated as a true sale and absolute transfer of the state’s tobacco receipts transferred and not as a pledge or other security interest for any borrowing. A sale agreement that expressly states that the transfer of all or a portion of the state’s tobacco receipts to the authority is a sale or other absolute transfer signifies that the transaction is a true sale and is not a secured transaction and that title, legal and equitable, has passed to the authority. The characterization of a sale as an absolute transfer by the participants shall not be negated or

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

(7) On and after the effective date of each sale of TSRs, the state shall have no right, title, or interest in or to the TSRs sold, and the TSRs sold shall be property of the authority and not of this state, and shall be owned, received, held, and disbursed by the authority and not this state. On or before the effective date of a sale described in this subsection, this state through the state treasurer shall notify the escrow agent under the master settlement agreement that this state has sold all or a portion of the state’s tobacco receipts to the authority, including, if applicable, a statement as to the percentage sold and shall irrevocably instruct the escrow agent that, subsequent to the date specified in the notice, that portion of the state’s tobacco receipts are to be paid directly to the authority or the trustee under the applicable authority resolution, trust agreement, or trust indenture for the benefit of the owners of the bonds and benefited parties until the authority’s bonds and ancillary facilities are no longer outstanding. Once the bonds or ancillary facilities are no longer outstanding, an officer or agent of this state who shall receive any TSRs shall hold them in trust for the authority or the trustee, as applicable, and shall promptly remit the same to the authority or the trustee, as applicable.

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

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005;—Am. 2007, Act 18, Imd. Eff. June 12, 2007;—Am. 2008, Act 101, Imd. Eff. Apr. 18, 2008.

129.269 Obligations.

Sec. 9. The issuance of bonds and the execution of any ancillary facility under the provisions of this act shall not directly, or indirectly, or contingently obligate the state or any political subdivision of this state to pay any amounts to the authority or owner of bonds or benefited parties or levy or pledge any form of taxation whatsoever for the bonds or ancillary facilities. The bonds and any ancillary facility are not a debt or liability of this state or any agency or instrumentality of this state, other than the authority as set forth in this act, either legal, moral, or otherwise, and nothing contained in this act shall be construed to authorize the authority to incur any indebtedness on behalf of or in any way to obligate this state or any political subdivision of this state, and the bonds and any ancillary facility shall contain on the face of the bond and ancillary facility or other prominent place on the bond or ancillary facility in bold typeface a statement to that effect.

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

129.270 Creation of authority; purpose as public and governmental; property and income exempt from tax; interest.

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

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

(3) In the case of any bonds, the interest on which is intended to be exempt from federal income tax, the authority shall prescribe restrictions on the use of the proceeds of those bonds and related matters as are necessary to assure the exemption, and the recipients of proceeds of those bonds shall be bound thereby to the extent the restrictions shall be made applicable to them. Any recipient of the proceeds of bonds bearing interest that is intended to be exempt from federal income tax, including without limitation this state or any political subdivision of this state, is authorized to execute a tax regulatory agreement with the authority and, as to any political subdivision that is a recipient of the proceeds of bonds bearing interest that is intended to be exempt from federal income, this state. The execution of a tax regulatory agreement may be treated as a condition to receiving any proceeds of a bond issued under this act.

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

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129.271 Duties of state before payment or discharge of bonds and ancillary facilities.

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

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

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

(c) Not amend the master settlement agreement in any manner that would materially impair the rights of the owners of the bonds or of the benefited parties.

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

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

(f) Not fail to enforce the qualifying statute.

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

(2) The state budget director is authorized and directed to include the pledge and agreement made under this section in sale agreements and the authority is authorized and directed to include the pledge and agreement in any contract with the owners of the bonds and benefited parties.

(3) Prior to the date that is 1 year and 1 day after the authority no longer has any bonds or ancillary facilities outstanding, the authority shall have no authority to file a voluntary petition under chapter 9 of the federal bankruptcy code or such corresponding chapter or sections as may, from time to time, be in effect, and neither any public officer or any organization, entity, or other person shall authorize the authority to be or become a debtor under chapter 9 of the federal bankruptcy code or any successor or corresponding chapter or sections during that period. This state hereby covenants with the owners of the bonds and benefited parties that this state will not limit or alter the denial of the authority under this subsection during the period referred to in this subsection. The authority is authorized and directed to include this covenant as an agreement of this state in any contract with the owners of the bonds and benefited parties.

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

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129.272 Effect of bonds issued under act.

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

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

129.273 Dissolution of authority.

Sec. 13. The authority may be dissolved by act of the legislature on condition that the authority has no debts or obligations outstanding or that provision has been made for the payment or retirement of all debts or obligations. Upon any such dissolution of the authority, all property, funds, and assets of the authority shall be vested in this state.

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

129.274 Construction of act.

Sec. 14. This act and all powers granted hereby shall be liberally construed to effectuate its intent and their

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purposes, without implied limitations on the powers of the authority, the state budget director, and the state treasurer. This act shall constitute full, complete, and additional authority for all things that are contemplated in this act to be done. All rights and powers granted in this act shall be cumulative with those derived from other sources and shall not, except as expressly stated in this act, be construed in limitation of those rights and powers. Insofar as the provisions of this act are inconsistent with the provisions of any other act, general or special, the provisions of this act shall be controlling. If any clause, paragraph, section, or part of this act is adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair, or invalidate the remainder of the clause, paragraph, section, or part but shall be applied in its operation to the clause, sentence, paragraph, section, or part directly involved in the controversy in which the judgment shall have been rendered.

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

129.275 Availability of funds.

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

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

129.276 Report.

Sec. 16. The authority shall submit an annual report no later than March 1 relating to its activities for the preceding calendar year to the governor, the speaker and minority leader of the house of representatives, and the majority and minority leaders of the senate.

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

129.277 Appropriation.

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

(a) Payment of operating expenses of the authority.

(b) Funding any reserve requirements.

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

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

129.278 Legal jurisdiction.

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

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

129.279 Severability.

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

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005.

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