

2 **SB 6828 - H AMD Adopted 3-12-02 0530**
3 By Representative

4

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** LEGISLATIVE DECLARATION. The legislature
8 declares it to be the public policy of the state and a recognized
9 governmental function to assist in securitizing the revenue stream from
10 the master settlement agreement between the state and tobacco product
11 manufacturers in order to provide a current and reliable source of
12 revenue for the state. The purpose of this chapter is to establish a
13 tobacco settlement authority having the power to purchase certain
14 rights of the state under the master settlement agreement and to issue
15 nonrecourse revenue bonds to pay outstanding obligations of the state
16 in order to make funds available for increased costs of health care,
17 long-term care, and other programs of the state. This chapter, being
18 necessary for the welfare of the state and its inhabitants, shall be
19 liberally construed to effect the purposes thereof.

20 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
21 section apply throughout this chapter unless the context clearly
22 requires otherwise.

23 (1) "Authority" means the tobacco settlement authority created in
24 this chapter.

25 (2) "Board" means the governing board of the authority.

26 (3) "Bonds" means bonds, notes, and other obligations and financing
27 arrangements issued or entered into by the authority under this
28 chapter.

29 (4) "Master settlement agreement" means the national master
30 settlement agreement and related documents entered into on November 23,
31 1998, by the state and the four principal United States tobacco product
32 manufacturers, as amended and supplemented, for the settlement of
33 litigation brought by the state against the tobacco product
34 manufacturers.

1 (5) "Sales agreement" means any agreement authorized under this
2 chapter in which the state provides for the sale to the authority of a
3 portion of the payments required to be made by tobacco product
4 manufacturers to the state and the state's rights to receive such
5 payments, pursuant to the master settlement agreement.

6 NEW SECTION. **Sec. 3.** TOBACCO SETTLEMENT AUTHORITY--ESTABLISHED.

7 (1) The tobacco settlement authority is created and constitutes a
8 public instrumentality and agency of the state, separate and distinct
9 from the state, exercising public and essential governmental functions.
10 The authority is a public body within the meaning of RCW 39.53.010.

11 (2) The powers of the authority are vested in and shall be
12 exercised by a board consisting of five directors appointed by the
13 governor, one of whom shall be appointed by the governor as chair of
14 the authority and who shall serve on the authority and as chair of the
15 authority at the pleasure of the governor. The governor shall make the
16 initial appointments no later than thirty days after the effective date
17 of this section. The term of the directors, other than the chair,
18 shall be four years from the date of their appointment, except that the
19 terms of two of the initial appointees, as determined by the governor,
20 shall be for two years from the date of their appointment. A director
21 may be removed by the governor for cause under RCW 43.06.070 and
22 43.06.080. The governor shall fill any vacancy on the board by
23 appointment for the remainder of the unexpired term. The members of
24 the authority shall be compensated in accordance with RCW 43.03.240 and
25 may be reimbursed, solely from the funds of the authority, for expenses
26 incurred in the discharge of their duties under this chapter, subject
27 to RCW 43.03.050 and 43.03.060.

28 (3) Three members of the board constitute a quorum.

29 (4) The members shall elect a treasurer and secretary annually, and
30 other officers as the members determine necessary.

31 (5) Meetings of the board shall be held in accordance with the open
32 public meetings act, chapter 42.30 RCW, and at the call of the chair or
33 when a majority of the members so requests. Meetings of the board may
34 be held at any location within or out of the state, and members of the
35 board may participate in a meeting of the board by means of a
36 conference telephone or similar communication equipment under RCW
37 23B.08.200.

1 (6) The staff of the state housing finance commission under chapter
2 43.180 RCW shall provide administrative and staff support to the
3 authority and shall be compensated for its services solely from the
4 funds of the authority.

5 NEW SECTION. **Sec. 4.** BONDS NOT DEBT OF STATE. (1) Bonds issued
6 under this chapter shall be issued in the name of the authority. The
7 bonds shall not be obligations of the state of Washington and shall be
8 obligations only of the authority, payable solely from the special fund
9 or funds created by the authority for their payment.

10 (2) Bonds issued under this chapter shall contain a recital on
11 their face to the effect that payment of the principal of, interest on,
12 and prepayment premium, if any, on the bonds shall be a valid claim
13 only as against the special fund or funds relating thereto, that
14 neither the faith and credit nor the taxing power of the state or any
15 municipal corporation, subdivision, or agency of the state, other than
16 the authority as set forth in this chapter, is pledged to the payment
17 of the principal of, interest on, and prepayment premium, if any, on
18 the bonds.

19 (3) Contracts entered into by the authority shall be entered into
20 in the name of the authority and not in the name of the state of
21 Washington. The obligations of the authority under the contracts shall
22 be obligations only of the authority and are not in any way obligations
23 of the state of Washington.

24 NEW SECTION. **Sec. 5.** FINANCING POWERS. In addition to other
25 powers and duties prescribed in this chapter, the authority is
26 empowered to:

27 (1) Establish a stable source of revenue to be used for the
28 purposes designated in this chapter;

29 (2) Enter into sales agreements with the state for purchase of a
30 portion of the amounts otherwise due to the state under the master
31 settlement agreement, and of the state's rights to receive such
32 amounts;

33 (3) Issue bonds, the interest and gain on which may or may not be
34 exempt from general federal income taxation, in one or more series, and
35 to refund or refinance its debt and obligations;

1 (4) Sell, pledge, or assign, as security, all or a portion of the
2 revenues derived by the authority under any sales agreement, to provide
3 for and secure the issuance of its bonds;

4 (5) Provide for the investment of any funds, including funds held
5 in reserve, not required for immediate disbursement, and provide for
6 the selection of investments;

7 (6) Manage its funds, obligations, and investments as necessary and
8 as consistent with its purpose; and

9 (7) Implement the purposes of this chapter.

10 NEW SECTION. **Sec. 6.** GENERAL POWERS--RESTRICTIONS. (1) The
11 authority has all the general powers necessary to carry out its
12 purposes and duties and to exercise its specific powers. In addition
13 to other powers specified in this chapter, the authority may:

14 (a) Sue and be sued in its own name;

15 (b) Make and execute agreements, contracts, and other instruments,
16 with any public or private person, in accordance with this chapter;

17 (c) Employ, contract with, or engage independent counsel, bond
18 counsel, other attorneys, financial advisors, investment bankers,
19 auditors, other technical or professional assistants, and such other
20 personnel as are necessary and recommended by the state housing finance
21 commission staff;

22 (d) Invest or deposit moneys of the authority in any manner
23 determined by the authority and enter into hedge agreements, swap
24 agreements, or other financial products, including payment agreements
25 defined under RCW 39.96.020(5). The authority is not a governmental
26 entity for purposes of chapter 39.96 RCW;

27 (e) Establish such special funds, and controls on deposits to and
28 disbursements from them, as it finds convenient for the implementation
29 of this chapter;

30 (f) Procure insurance, other credit enhancements, and other
31 financing arrangements for its bonds to fulfill its purposes under this
32 chapter, including but not limited to municipal bond insurance and
33 letters of credit;

34 (g) Accept appropriations, gifts, grants, loans, or other aid from
35 public or private entities;

36 (h) Adopt rules, consistent with this chapter, as the board
37 determines necessary;

1 (i) Delegate any of its powers and duties if consistent with the
2 purposes of this chapter; and

3 (j) Exercise any other power reasonably required to implement the
4 purposes of this chapter.

5 (2) The authority does not have the power of eminent domain and
6 does not have the power to levy taxes of any kind.

7 NEW SECTION. **Sec. 7.** AUTHORIZATION OF THE SALE OF RIGHTS IN THE
8 MASTER SETTLEMENT AGREEMENT. (1) The governor is authorized to sell
9 and assign to the authority all of the state's right to receive a
10 portion of the state's annual share of the revenue derived from the
11 master settlement agreement for litigation brought by the state against
12 tobacco product manufacturers. The portion of the state's share sold
13 and assigned shall be determined by the governor in an amount necessary
14 to generate net proceeds to the state for deposit to the tobacco
15 securitization trust account under section 13 of this act up to four
16 hundred fifty million dollars. The attorney general shall assist the
17 governor in the review of all necessary documentation to effect the
18 sale. The governor and the authority are authorized to take any action
19 necessary to facilitate and complete the sale.

20 (2) The sale made under this section is irrevocable so long as
21 bonds issued under this chapter remain outstanding. The portion of the
22 revenue sold to the authority shall be pledged to the bondholders. The
23 sale and assignment shall constitute and be treated as a true sale and
24 absolute transfer of the revenue so transferred and not as a pledge or
25 other security interest granted by the state for any borrowing. The
26 characterization of such a sale as an absolute transfer shall not be
27 negated or adversely affected by the fact that only a portion of the
28 revenue from the master settlement agreement is being sold and
29 assigned, or by the state's acquisition or retention of an ownership
30 interest in the portion of the revenue from the master settlement
31 agreement not so assigned.

32 (3) In addition to such other terms, provisions, and conditions as
33 the governor and the authority may determine appropriate for inclusion
34 in the sale agreements, the sale agreements shall contain (a) a
35 covenant of the state that the state will not agree to any amendment of
36 the master settlement agreement that materially and adversely affects
37 the authority's ability to receive the portion of the state's share of
38 master settlement agreement payments that have been sold to the

1 authority; (b) a requirement that the state enforce, at its own
2 expense, the provisions of the master settlement agreement that require
3 the payment of the portion of the state's share of master settlement
4 agreement payments that have been sold to the authority; and (c) a
5 covenant that the state shall take no action that would adversely
6 affect the tax-exempt status of any tax-exempt bonds of the authority.

7 (4) On or after the effective date of the sale, the state shall not
8 have any right, title, or interest in the portion of the state's share
9 of the master settlement agreement revenue sold and such portion shall
10 be the property of the authority and not the state, and shall be owned,
11 received, held, and disbursed by the authority or its trustee or
12 assignee, and not the state.

13 (5) The terms of the state's sale to the authority of a portion of
14 the master settlement agreement revenue shall provide that the portion
15 shall be paid directly to the authority or its trustee or assignee.
16 The revenue sold and assigned shall not be received in the treasury of
17 the state and shall not be or deemed to be general state revenues as
18 that term is used in Article VIII, section 1 of the state Constitution.

19 NEW SECTION. **Sec. 8.** BONDS. (1) The authority may issue its
20 bonds in principal amounts which, in the opinion of the authority, are
21 necessary to provide sufficient funds for achievement of its purposes,
22 the payment of debt service on its bonds, the establishment of reserves
23 to secure the bonds, the costs of issuance of its bonds and credit
24 enhancements, if any, and all other expenditures of the authority
25 incident to and necessary to carry out its purposes or powers. The
26 authority may also issue refunding bonds, including advance refunding
27 bonds, for the purpose of refunding previously issued bonds, and may
28 issue other types of bonds, debt obligations, and financing
29 arrangements necessary to fulfill its purposes or the purposes of this
30 chapter. The bonds are investment securities and negotiable
31 instruments within the meaning of and for the purposes of the uniform
32 commercial code.

33 (2) The authority's bonds shall bear such date or dates, mature at
34 such time or times, be in such denominations, be in such form, be
35 registered or registrable in such manner, be made transferable,
36 exchangeable, and interchangeable, be payable in such medium of
37 payment, at such place or places, be subject to such terms of
38 redemption, bear such fixed or variable rate or rates of interest, be

1 taxable or tax exempt, be payable at such time or times, and be sold in
2 such manner and at such price or prices, as the authority determines.
3 The bonds shall be executed by one or more officers of the authority,
4 and by the trustee or paying agent if the authority determines to use
5 a trustee or paying agent for the bonds. Execution of the bonds may be
6 by manual or facsimile signature, provided that at least one signature
7 on the bond is manual.

8 (3) The bonds of the authority shall be subject to such terms,
9 conditions, covenants, and protective provisions as are found necessary
10 or desirable by the authority, including, but not limited to, pledges
11 of the authority's assets, setting aside of reserves, and other
12 provisions the authority finds are necessary or desirable for the
13 security of bondholders.

14 (4) Any revenue pledged by the authority to be received under the
15 sales agreement or in special funds created by the authority shall be
16 valid and binding at the time the pledge is made. Receipts so pledged
17 and then or thereafter received by the authority and any securities in
18 which such receipts may be invested shall immediately be subject to the
19 lien of such pledge without any physical delivery thereof or further
20 act. The lien of any such pledge shall be valid and binding as against
21 all parties having claims of any kind against the authority, whether
22 such parties have notice of the lien. Notwithstanding any other
23 provision to the contrary, the resolution or indenture of the authority
24 or any other instrument by which a pledge is created need not be
25 recorded or filed pursuant to chapter 62A.9A RCW to perfect such
26 pledge. The authority shall constitute a governmental unit within the
27 meaning of RCW 62A.9A-102(a)(45).

28 (5) When issuing bonds, the authority may provide for the future
29 issuance of additional bonds or parity debt on a parity with
30 outstanding bonds, and the terms and conditions of their issuance. The
31 authority may issue refunding bonds in accordance with chapter 39.53
32 RCW or issue bonds with a subordinate lien against the fund or funds
33 securing outstanding bonds.

34 (6) The board and any person executing the bonds are not liable
35 personally on the indebtedness or subject to any personal liability or
36 accountability by reason of the issuance thereof.

37 (7) The authority may, out of any fund available therefor, purchase
38 its bonds in the open market.

1 NEW SECTION. **Sec. 9.** LEGAL INVESTMENTS. Bonds issued under this
2 chapter are hereby made securities in which all insurance companies,
3 trust companies in their commercial departments, savings banks,
4 cooperative banks, banking associations, investment companies,
5 executors, trustees and other fiduciaries, and all other persons
6 whatsoever who are now or may hereafter be authorized to invest in
7 obligations of the state may properly and legally invest funds,
8 including capital in their control or belonging to them.

9 NEW SECTION. **Sec. 10.** LIMITATION OF LIABILITY. Members of the
10 board and persons acting in the authority's behalf, while acting within
11 the scope of their employment or agency, are not subject to personal
12 liability resulting from carrying out the powers and duties conferred
13 on them under this chapter.

14 NEW SECTION. **Sec. 11.** BANKRUPTCY. Prior to the date that is
15 three hundred sixty-six days after which the authority no longer has
16 any bonds outstanding, the authority is prohibited from filing a
17 voluntary petition under chapter 9 of the federal bankruptcy code or
18 such corresponding chapter or section as may, from time to time, be in
19 effect, and a public official or organization, entity, or other person
20 shall not authorize the authority to be or become a debtor under
21 chapter 9 or any successor or corresponding chapter or sections during
22 such periods. This section shall be part of any contractual obligation
23 owed to the holders of bonds issued under this chapter. Any such
24 contractual obligation shall not subsequently be modified by state law
25 during the period of the contractual obligation.

26 NEW SECTION. **Sec. 12.** DISSOLUTION OF THE AUTHORITY. The
27 authority shall dissolve no later than two years from the date of final
28 payment of all of its outstanding bonds and the satisfaction of all
29 outstanding obligations of the authority, except to the extent
30 necessary to remain in existence to fulfill any outstanding covenants
31 or provisions with bondholders or third parties made in accordance with
32 this chapter. Upon dissolution of the authority, all assets of the
33 authority shall be returned to the state and shall be deposited in the
34 state general fund, and the authority shall execute any necessary
35 assignments or instruments, including any assignment of any right,

1 title, or ownership to the state for receipt of payments under the
2 master settlement agreement.

3 NEW SECTION. **Sec. 13.** DISPOSITION OF PROCEEDS. The state
4 treasurer shall deposit the proceeds of the sale of revenue under this
5 chapter into the tobacco securitization trust account hereby created
6 and held in the custody of the state treasurer. Moneys in the tobacco
7 securitization trust account shall be subject to such appropriations
8 and transfers as may be provided by law and shall be used for capital
9 expenditures, debt service on outstanding bonds of the state, or for
10 other purposes as permitted by law. The sales agreement under this
11 chapter shall provide for the state to allocate the use of proceeds of
12 the bonds issued by the authority to enable interest on all or a
13 portion of the bonds to be excluded from income for federal tax law
14 purposes.

15 NEW SECTION. **Sec. 14.** A new section is added to chapter 82.04 RCW
16 to read as follows:

17 BUSINESS AND OCCUPATION TAX EXEMPTION. This chapter does not apply
18 to income received by the tobacco settlement authority under chapter
19 43.-- RCW (sections 1 through 13 of this act).

20 **Sec. 15.** RCW 43.79.480 and 1999 c 309 s 927 are each amended to
21 read as follows:

22 (1) Moneys received by the state of Washington in accordance with
23 the settlement of the state's legal action against tobacco product
24 manufacturers, exclusive of costs and attorneys' fees, shall be
25 deposited in the tobacco settlement account created in this section
26 except as these moneys are sold or assigned under chapter 43.-- RCW
27 (sections 1 through 13 of this act).

28 (2) The tobacco settlement account is created in the state
29 treasury. Moneys in the tobacco settlement account may only be
30 transferred to the health services account for the purposes set forth
31 in RCW 43.72.900, and to the tobacco prevention and control account for
32 purposes set forth in this section.

33 (3) The tobacco prevention and control account is created in the
34 state treasury. The source of revenue for this account is moneys
35 transferred to the account from the tobacco settlement account,
36 investment earnings, donations to the account, and other revenues as

1 directed by law. Expenditures from the account are subject to
2 appropriation.

3 ~~((4) The state treasurer shall transfer one hundred million
4 dollars from the tobacco settlement account to the tobacco prevention
5 and control account upon authorization of the director of financial
6 management. The director shall authorize transfer of the total amount
7 by June 30, 2001.))~~

8 NEW SECTION. Sec. 16. CAPTIONS. Captions used in this act are
9 not any part of the law.

10 NEW SECTION. Sec. 17. CODIFICATION. Sections 1 through 13 of
11 this act constitute a new chapter in Title 43 RCW.

12 NEW SECTION. Sec. 18. SEVERABILITY. If any provision of this act
13 or its application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. Sec. 19. EFFECTIVE DATE. This act is necessary for
17 the immediate preservation of the public peace, health, or safety, or
18 support of the state government and its existing public institutions,
19 and takes effect immediately."

20 **SB 6828** - H AMD
21 By Representative

22

23 On page 1, line 2 of the title, after "agreement;" strike the
24 remainder of the title and insert "amending RCW 43.79.480; adding a new
25 section to chapter 82.04 RCW; adding a new chapter to Title 43 RCW;
26 creating new sections; and declaring an emergency."

EFFECT: (1) Directs the Governor to generate \$450 million in net
proceeds from the sale of the right to receive a portion of the state's
share of revenue from the Master Tobacco Settlement.

(2) Establishes a trust fund in the custody of the Treasurer in
which the proceeds of the sale must be deposited.

(3) Makes other technical changes to ensure that the bonds are not subject to the state debt limit and that interest on them is tax exempt.

(4) Clarifies the state's duties regarding enforcement and amendment of the Master Tobacco Settlement Agreement.

--- **END** ---