
SENATE BILL 6828

State of Washington 57th Legislature

2002 Regular Session

By Senators Brown and Swecker

Read first time 03/04/2002. Referred to Committee on Ways & Means.

1 AN ACT Relating to the disposition of the state's revenues from the
2 tobacco litigation national master settlement agreement; amending RCW
3 43.79.480; adding a new section to chapter 82.04 RCW; adding a new
4 chapter to Title 43 RCW; creating new sections; and declaring an
5 emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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. This chapter, being necessary for the
16 welfare of the state and its inhabitants, shall be liberally construed
17 to effect the purposes thereof.

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

4 (1) "Authority" means the tobacco settlement authority created in
5 this chapter.

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

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

10 (4) "Master settlement agreement" means the national master
11 settlement agreement for litigation brought by the state against
12 tobacco product manufacturers.

13 (5) "Sales agreement" means any agreement authorized under this
14 chapter in which the state provides for the sale of a portion of the
15 state's monetary rights and interests, all rights of enforcement, and
16 all rights necessary and convenient for enforcement of those monetary
17 rights and interests, in the master settlement agreement, to the
18 authority.

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

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

24 (2) The powers of the authority are vested in and shall be
25 exercised by a board consisting of five directors appointed by the
26 governor, one of whom shall be appointed by the governor as chair of
27 the authority and who shall serve on the authority and as chair of the
28 authority at the pleasure of the governor. The governor shall make the
29 initial appointments no later than thirty days after the effective date
30 of this section. The term of the directors, other than the chair,
31 shall be four years from the date of their appointment, except that the
32 terms of two of the initial appointees, as determined by the governor,
33 shall be for two years from the date of their appointment. A director
34 may be removed by the governor for cause under RCW 43.06.070 and
35 43.06.080. The governor shall fill any vacancy on the board by
36 appointment for the remainder of the unexpired term. The members of
37 the authority shall be compensated in accordance with RCW 43.03.240 and
38 may be reimbursed, solely from the funds of the authority, for expenses

1 incurred in the discharge of their duties under this chapter, subject
2 to RCW 43.03.050 and 43.03.060.

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

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

6 (5) Meetings of the board shall be held in accordance with the open
7 public meetings act, chapter 42.30 RCW, and at the call of the chair or
8 when a majority of the members so requests. Meetings of the board may
9 be held at any location within or out of the state, and members of the
10 board may participate in a meeting of the board by means of a
11 conference telephone or similar communication equipment under RCW
12 23B.08.200.

13 (6) The staff of the state housing finance commission under chapter
14 43.180 RCW shall provide administrative and staff support to the
15 authority and shall be compensated for its services solely from the
16 funds of the authority.

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

22 (2) Bonds issued under this chapter shall contain a recital on
23 their face to the effect that payment of the principal of, interest on,
24 and prepayment premium, if any, on the bonds shall be a valid claim
25 only as against the special fund or funds relating thereto, that
26 neither the faith and credit nor the taxing power of the state or any
27 municipal corporation, subdivision, or agency of the state, other than
28 the authority as set forth in this chapter, is pledged to the payment
29 of the principal of, interest on, and prepayment premium, if any, on
30 the bonds.

31 (3) Contracts entered into by the authority shall be entered into
32 in the name of the authority and not in the name of the state of
33 Washington. The obligations of the authority under the contracts shall
34 be obligations only of the authority and are not in any way obligations
35 of the state of Washington.

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

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

6 (2) Enter into sales agreements with the state for the periodic
7 distribution of amounts due the state under the master settlement
8 agreement;

9 (3) Issue bonds which may or may not be exempt from general federal
10 income taxation in one or more series, and to refund or refinance its
11 debt and obligations;

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

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

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

20 (7) Implement the purposes of this chapter.

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

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

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

28 (c) Employ, contract with, or engage independent counsel, bond
29 counsel, other attorneys, financial advisors, investment bankers,
30 auditors, other technical or professional assistants, and such other
31 personnel as are necessary and recommended by the state housing finance
32 commission staff;

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

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

4 (f) Procure insurance, other credit enhancements, and other
5 financing arrangements for its bonds to fulfill its purposes under this
6 chapter, including but not limited to municipal bond insurance and
7 letters of credit;

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

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

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

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

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

18 NEW SECTION. **Sec. 7.** AUTHORIZATION OF THE SALE OF RIGHTS IN THE
19 MASTER SETTLEMENT AGREEMENT. (1) The governor is authorized to sell to
20 the authority the right to receive up to twenty-five percent of the
21 state's annual share of the revenue derived from the master settlement
22 agreement for litigation brought by the state against tobacco product
23 manufacturers. The portion of the revenue sold shall be determined by
24 the governor based on the revenue assumptions reflected in the biennial
25 state appropriations act at the time of the sale. The attorney general
26 shall assist the governor in the review of all necessary documentation
27 to effect the sale. The governor and the authority are authorized to
28 take any action necessary to facilitate and complete the sale.

29 (2) The sale made under this section is irrevocable during the time
30 when bonds are outstanding under this chapter and shall be a part of
31 the contractual obligation owed to the bondholders. The sale shall
32 constitute and be treated as a true sale and absolute transfer of the
33 property so transferred and not as a pledge or other security interest
34 for any borrowing. The characterization of such a sale as an absolute
35 transfer shall not be negated or adversely affected by the fact that
36 only a portion of the revenue from the master settlement agreement is
37 being sold, or by the state's acquisition or retention of an ownership
38 interest in the residual assets.

1 (3) On or after the effective date of the sale, the state shall not
2 have any right, title, or interest in the portion of the master
3 settlement agreement revenues sold and such portion shall be the
4 property of the authority and not the state, and shall be owned,
5 received, held, and disbursed by the authority or its trustee or
6 assignee, and not the state.

7 NEW SECTION. **Sec. 8.** BONDS. (1) The authority may issue its
8 bonds in principal amounts which, in the opinion of the authority, are
9 necessary to provide sufficient funds for achievement of its purposes,
10 the payment of debt service on its bonds, the establishment of reserves
11 to secure the bonds, the costs of issuance of its bonds, and all other
12 expenditures of the authority incident to and necessary to carry out
13 its purposes or powers. The authority may also issue refunding bonds,
14 including advance refunding bonds, for the purpose of refunding
15 previously issued bonds, and may issue other types of bonds, debt
16 obligations, and financing arrangements necessary to fulfill its
17 purposes or the purposes of this chapter. The bonds are investment
18 securities and negotiable instruments within the meaning of and for the
19 purposes of the uniform commercial code.

20 (2) The authority's bonds shall bear such date or dates, mature at
21 such time or times, be in such denominations, be in such form, be
22 registered or registrable in such manner, be made transferable,
23 exchangeable, and interchangeable, be payable in such medium of
24 payment, at such place or places, be subject to such terms of
25 redemption, bear such fixed or variable rate or rates of interest, be
26 taxable or tax exempt, be payable at such time or times, and be sold in
27 such manner and at such price or prices, as the authority determines.
28 The bonds shall be executed by one or more officers of the authority,
29 and by the trustee or paying agent if the authority determines to use
30 a trustee or paying agent for the bonds. Execution of the bonds may be
31 by manual or facsimile signature, provided that at least one signature
32 on the bond is manual.

33 (3) The bonds of the authority shall be subject to such terms,
34 conditions, covenants, and protective provisions as are found necessary
35 or desirable by the authority, including, but not limited to, pledges
36 of the authority's assets, setting aside of reserves, and other
37 provisions the authority finds are necessary or desirable for the
38 security of bondholders.

1 (4) Any amount pledged by the authority to be received under the
2 sales agreement or in special funds created by the authority shall be
3 valid and binding at the time the pledge is made. Receipts so pledged
4 and then or thereafter received by the authority and any securities in
5 which such receipts may be invested shall immediately be subject to the
6 lien of such pledge without any physical delivery thereof or further
7 act. The lien of any such pledge shall be valid and binding as against
8 all parties having claims of any kind against the authority, whether
9 such parties have notice of the lien. Notwithstanding any other
10 provision to the contrary, the resolution or indenture of the authority
11 or any other instrument by which a pledge is created need not be
12 recorded or filed pursuant to chapter 62A.9A RCW to perfect such
13 pledge. The authority shall constitute a governmental unit within the
14 meaning of RCW 62A.9A-102(a)(45).

15 (5) When issuing bonds, the authority may provide for the future
16 issuance of additional bonds or parity debt on a parity with
17 outstanding bonds, and the terms and conditions of their issuance. The
18 authority may issue refunding bonds in accordance with chapter 39.53
19 RCW or issue bonds with a subordinate lien against the fund or funds
20 securing outstanding bonds.

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

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

26 NEW SECTION. **Sec. 9.** LEGAL INVESTMENTS. Bonds issued under this
27 chapter are hereby made securities in which all insurance companies,
28 trust companies in their commercial departments, savings banks,
29 cooperative banks, banking associations, investment companies,
30 executors, trustees and other fiduciaries, and all other persons
31 whatsoever who are now or may hereafter be authorized to invest in
32 obligations of the state may properly and legally invest funds,
33 including capital in their control or belonging to them.

34 NEW SECTION. **Sec. 10.** LIMITATION OF LIABILITY. Members of the
35 board and persons acting in the authority's behalf, while acting within
36 the scope of their employment or agency, are not subject to personal

1 liability resulting from carrying out the powers and duties conferred
2 on them under this chapter.

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

15 NEW SECTION. **Sec. 12.** DISSOLUTION OF THE AUTHORITY. The
16 authority shall dissolve no later than two years from the date of final
17 payment of all outstanding bonds and the satisfaction of all
18 outstanding obligations of the authority, except to the extent
19 necessary to remain in existence to fulfill any outstanding covenants
20 or provisions with bondholders or third parties made in accordance with
21 this chapter. Upon dissolution of the authority, all assets of the
22 authority shall be returned to the state and shall be deposited in the
23 state general fund, and the authority shall execute any necessary
24 assignments or instruments, including any assignment of any right,
25 title, or ownership to the state for receipt of payments under the
26 master settlement agreement.

27 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.04 RCW
28 to read as follows:

29 BUSINESS AND OCCUPATION TAX EXEMPTION. This chapter does not apply
30 to income received by the tobacco settlement authority under chapter
31 43.-- RCW (sections 1 through 12 of this act).

32 NEW SECTION. **Sec. 14.** DISPOSITION OF PROCEEDS. During fiscal
33 year 2003, the state treasurer shall deposit the proceeds of the sale
34 of revenue under chapter 43.-- RCW (sections 1 through 12 of this act)
35 as follows:

1 (1) One hundred five million dollars shall be deposited into the
2 health services account established by RCW 43.72.900; and

3 (2) The remainder of the proceeds shall be deposited to the state
4 general fund.

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

7 (1) Moneys received by the state of Washington in accordance with
8 the settlement of the state's legal action against tobacco product
9 manufacturers, exclusive of costs and attorneys' fees, shall be
10 deposited in the tobacco settlement account created in this section
11 except as these moneys are sold or assigned under chapter 43.-- RCW
12 (sections 1 through 12 of this act).

13 (2) The tobacco settlement account is created in the state
14 treasury. Moneys in the tobacco settlement account may only be
15 transferred to the health services account for the purposes set forth
16 in RCW 43.72.900, and to the tobacco prevention and control account for
17 purposes set forth in this section.

18 (3) The tobacco prevention and control account is created in the
19 state treasury. The source of revenue for this account is moneys
20 transferred to the account from the tobacco settlement account,
21 investment earnings, donations to the account, and other revenues as
22 directed by law. Expenditures from the account are subject to
23 appropriation.

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

29 NEW SECTION. **Sec. 16.** CAPTIONS. Captions used in this act are
30 not any part of the law.

31 NEW SECTION. **Sec. 17.** CODIFICATION. Sections 1 through 12 of
32 this act constitute a new chapter in Title 43 RCW.

33 NEW SECTION. **Sec. 18.** SEVERABILITY. If any provision of this act
34 or its application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 19.** EFFECTIVE DATE. This act is necessary for
4 the immediate preservation of the public peace, health, or safety, or
5 support of the state government and its existing public institutions,
6 and takes effect immediately.

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