

CERTIFICATION OF ENROLLMENT

SENATE BILL 6828

57th Legislature
2002 Regular Session

Passed by the Senate March 13, 2002
YEAS 25 NAYS 23

President of the Senate

Passed by the House March 12, 2002
YEAS 50 NAYS 46

**Speaker of the
House of Representatives**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6828** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

Approved

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SENATE BILL 6828

AS AMENDED BY THE HOUSE

Passed Legislature - 2002 Regular Session

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 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.

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 and related documents entered into on November 23,
12 1998, by the state and the four principal United States tobacco product
13 manufacturers, as amended and supplemented, for the settlement of
14 litigation brought by the state against the tobacco product
15 manufacturers.

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

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

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

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

1 the authority shall be compensated in accordance with RCW 43.03.240 and
2 may be reimbursed, solely from the funds of the authority, for expenses
3 incurred in the discharge of their duties under this chapter, subject
4 to RCW 43.03.050 and 43.03.060.

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

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

8 (5) Meetings of the board shall be held in accordance with the open
9 public meetings act, chapter 42.30 RCW, and at the call of the chair or
10 when a majority of the members so requests. Meetings of the board may
11 be held at any location within or out of the state, and members of the
12 board may participate in a meeting of the board by means of a
13 conference telephone or similar communication equipment under RCW
14 23B.08.200.

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

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

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

33 (3) Contracts entered into by the authority shall be entered into
34 in the name of the authority and not in the name of the state of
35 Washington. The obligations of the authority under the contracts shall
36 be obligations only of the authority and are not in any way obligations
37 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 purchase of a
7 portion of the amounts otherwise due to the state under the master
8 settlement agreement, and of the state's rights to receive such
9 amounts;

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

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

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

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

21 (7) Implement the purposes of this chapter.

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

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

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

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

34 (d) Invest or deposit moneys of the authority in any manner
35 determined by the authority and enter into hedge agreements, swap
36 agreements, or other financial products, including payment agreements
37 defined under RCW 39.96.020(5). The authority is not a governmental
38 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
20 and assign to the authority all of the state's right to receive a
21 portion of the state's annual share of the revenue derived from the
22 master settlement agreement for litigation brought by the state against
23 tobacco product manufacturers. The portion of the state's share sold
24 and assigned shall be determined by the governor in an amount necessary
25 to generate net proceeds to the state for deposit to the tobacco
26 securitization trust account under section 13 of this act up to four
27 hundred fifty million dollars. The attorney general shall assist the
28 governor in the review of all necessary documentation to effect the
29 sale. The governor and the authority are authorized to take any action
30 necessary to facilitate and complete the sale.

31 (2) The sale made under this section is irrevocable so long as
32 bonds issued under this chapter remain outstanding. The portion of the
33 revenue sold to the authority shall be pledged to the bondholders. The
34 sale and assignment shall constitute and be treated as a true sale and
35 absolute transfer of the revenue so transferred and not as a pledge or
36 other security interest granted by the state for any borrowing. The
37 characterization of such a sale as an absolute transfer shall not be
38 negated or adversely affected by the fact that only a portion of the

1 revenue from the master settlement agreement is being sold and
2 assigned, or by the state's acquisition or retention of an ownership
3 interest in the portion of the revenue from the master settlement
4 agreement not so assigned.

5 (3) In addition to such other terms, provisions, and conditions as
6 the governor and the authority may determine appropriate for inclusion
7 in the sale agreements, the sale agreements shall contain (a) a
8 covenant of the state that the state will not agree to any amendment of
9 the master settlement agreement that materially and adversely affects
10 the authority's ability to receive the portion of the state's share of
11 master settlement agreement payments that have been sold to the
12 authority; (b) a requirement that the state enforce, at its own
13 expense, the provisions of the master settlement agreement that require
14 the payment of the portion of the state's share of master settlement
15 agreement payments that have been sold to the authority; and (c) a
16 covenant that the state shall take no action that would adversely
17 affect the tax-exempt status of any tax-exempt bonds of the authority.

18 (4) On or after the effective date of the sale, the state shall not
19 have any right, title, or interest in the portion of the state's share
20 of the master settlement agreement revenue sold and such portion shall
21 be the property of the authority and not the state, and shall be owned,
22 received, held, and disbursed by the authority or its trustee or
23 assignee, and not the state.

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

30 NEW SECTION. **Sec. 8.** BONDS. (1) The authority may issue its
31 bonds in principal amounts which, in the opinion of the authority, are
32 necessary to provide sufficient funds for achievement of its purposes,
33 the payment of debt service on its bonds, the establishment of reserves
34 to secure the bonds, the costs of issuance of its bonds and credit
35 enhancements, if any, and all other expenditures of the authority
36 incident to and necessary to carry out its purposes or powers. The
37 authority may also issue refunding bonds, including advance refunding
38 bonds, for the purpose of refunding previously issued bonds, and may

1 issue other types of bonds, debt obligations, and financing
2 arrangements necessary to fulfill its purposes or the purposes of this
3 chapter. The bonds are investment securities and negotiable
4 instruments within the meaning of and for the purposes of the uniform
5 commercial code.

6 (2) The authority's bonds shall bear such date or dates, mature at
7 such time or times, be in such denominations, be in such form, be
8 registered or registrable in such manner, be made transferable,
9 exchangeable, and interchangeable, be payable in such medium of
10 payment, at such place or places, be subject to such terms of
11 redemption, bear such fixed or variable rate or rates of interest, be
12 taxable or tax exempt, be payable at such time or times, and be sold in
13 such manner and at such price or prices, as the authority determines.
14 The bonds shall be executed by one or more officers of the authority,
15 and by the trustee or paying agent if the authority determines to use
16 a trustee or paying agent for the bonds. Execution of the bonds may be
17 by manual or facsimile signature, provided that at least one signature
18 on the bond is manual.

19 (3) The bonds of the authority shall be subject to such terms,
20 conditions, covenants, and protective provisions as are found necessary
21 or desirable by the authority, including, but not limited to, pledges
22 of the authority's assets, setting aside of reserves, and other
23 provisions the authority finds are necessary or desirable for the
24 security of bondholders.

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

1 (5) When issuing bonds, the authority may provide for the future
2 issuance of additional bonds or parity debt on a parity with
3 outstanding bonds, and the terms and conditions of their issuance. The
4 authority may issue refunding bonds in accordance with chapter 39.53
5 RCW or issue bonds with a subordinate lien against the fund or funds
6 securing outstanding bonds.

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

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

12 NEW SECTION. **Sec. 9.** LEGAL INVESTMENTS. Bonds issued under this
13 chapter are hereby made securities in which all insurance companies,
14 trust companies in their commercial departments, savings banks,
15 cooperative banks, banking associations, investment companies,
16 executors, trustees and other fiduciaries, and all other persons
17 whatsoever who are now or may hereafter be authorized to invest in
18 obligations of the state may properly and legally invest funds,
19 including capital in their control or belonging to them.

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

25 NEW SECTION. **Sec. 11.** BANKRUPTCY. Prior to the date that is
26 three hundred sixty-six days after which the authority no longer has
27 any bonds outstanding, the authority is prohibited from filing a
28 voluntary petition under chapter 9 of the federal bankruptcy code or
29 such corresponding chapter or section as may, from time to time, be in
30 effect, and a public official or organization, entity, or other person
31 shall not authorize the authority to be or become a debtor under
32 chapter 9 or any successor or corresponding chapter or sections during
33 such periods. This section shall be part of any contractual obligation
34 owed to the holders of bonds issued under this chapter. Any such
35 contractual obligation shall not subsequently be modified by state law
36 during the period of the contractual obligation.

1 NEW SECTION. **Sec. 12.** DISSOLUTION OF THE AUTHORITY. The
2 authority shall dissolve no later than two years from the date of final
3 payment of all of its outstanding bonds and the satisfaction of all
4 outstanding obligations of the authority, except to the extent
5 necessary to remain in existence to fulfill any outstanding covenants
6 or provisions with bondholders or third parties made in accordance with
7 this chapter. Upon dissolution of the authority, all assets of the
8 authority shall be returned to the state and shall be deposited in the
9 state general fund, and the authority shall execute any necessary
10 assignments or instruments, including any assignment of any right,
11 title, or ownership to the state for receipt of payments under the
12 master settlement agreement.

13 NEW SECTION. **Sec. 13.** DISPOSITION OF PROCEEDS. The state
14 treasurer shall deposit the proceeds of the sale of revenue under this
15 chapter into the tobacco securitization trust account hereby created
16 and held in the custody of the state treasurer. Moneys in the tobacco
17 securitization trust account shall be subject to such appropriations
18 and transfers as may be provided by law and shall be used for capital
19 expenditures, debt service on outstanding bonds of the state, or for
20 other purposes as permitted by law. The sales agreement under this
21 chapter shall provide for the state to allocate the use of proceeds of
22 the bonds issued by the authority to enable interest on all or a
23 portion of the bonds to be excluded from income for federal tax law
24 purposes.

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

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

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

32 (1) Moneys received by the state of Washington in accordance with
33 the settlement of the state's legal action against tobacco product
34 manufacturers, exclusive of costs and attorneys' fees, shall be
35 deposited in the tobacco settlement account created in this section

1 except as these moneys are sold or assigned under chapter 43.-- RCW
2 (sections 1 through 13 of this act).

3 (2) The tobacco settlement account is created in the state
4 treasury. Moneys in the tobacco settlement account may only be
5 transferred to the health services account for the purposes set forth
6 in RCW 43.72.900, and to the tobacco prevention and control account for
7 purposes set forth in this section.

8 (3) The tobacco prevention and control account is created in the
9 state treasury. The source of revenue for this account is moneys
10 transferred to the account from the tobacco settlement account,
11 investment earnings, donations to the account, and other revenues as
12 directed by law. Expenditures from the account are subject to
13 appropriation.

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

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

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

23 NEW SECTION. Sec. 18. SEVERABILITY. If any provision of this act
24 or its application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

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

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