

Chapter 43.340 RCW
TOBACCO SETTLEMENT AUTHORITY

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RCW 43.340.005 Purpose—Construction. The legislature declares it to be the public policy of the state and a recognized governmental function to assist in securitizing the revenue stream from the master settlement agreement between the state and tobacco product manufacturers in order to provide a current and reliable source of revenue for the state. The purpose of this chapter is to establish a tobacco settlement authority having the power to purchase certain rights of the state under the master settlement agreement and to issue nonrecourse revenue bonds to pay outstanding obligations of the state in order to make funds available for increased costs of health care, long-term care, and other programs of the state. This chapter, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof. [2002 c 365 s 1.]

RCW 43.340.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

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

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

(5) "Sales agreement" means any agreement authorized under this chapter in which the state provides for the sale to the authority of a

portion of the payments required to be made by tobacco product manufacturers to the state and the state's rights to receive such payments, pursuant to the master settlement agreement. [2002 c 365 s 2.]

RCW 43.340.020 Tobacco settlement authority—Governing board—Meetings—Staff support.

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

(2) The powers of the authority are vested in and shall be exercised by a board consisting of five directors appointed by the governor, one of whom shall be appointed by the governor as chair of the authority and who shall serve on the authority and as chair of the authority at the pleasure of the governor. The governor shall make the initial appointments no later than thirty days after April 4, 2002. The term of the directors, other than the chair, shall be four years from the date of their appointment, except that the terms of two of the initial appointees, as determined by the governor, shall be for two years from the date of their appointment. A director may be removed by the governor for cause under RCW 43.06.070 and 43.06.080. The governor shall fill any vacancy on the board by appointment for the remainder of the unexpired term. The members of the authority shall be compensated in accordance with RCW 43.03.240 and may be reimbursed, solely from the funds of the authority, for expenses incurred in the discharge of their duties under this chapter, subject to RCW 43.03.050 and 43.03.060.

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

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

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

(6) The staff of the state housing finance commission under chapter 43.180 RCW shall provide administrative and staff support to the authority and shall be compensated for its services solely from the funds of the authority. [2002 c 365 s 3.]

RCW 43.340.030 Tobacco settlement authority—Powers—Rule-making authority.

(1) The authority has all the general powers necessary to carry out its purposes and duties and to exercise its specific powers. In addition to other powers specified in this chapter, the authority may:

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

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

(c) Employ, contract with, or engage independent counsel, bond counsel, other attorneys, financial advisors, investment bankers,

auditors, other technical or professional assistants, and such other personnel as are necessary and recommended by the state housing finance commission staff;

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

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

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

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

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

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

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

(2) The authority does not have the power of eminent domain and does not have the power to levy taxes of any kind. [2002 c 365 s 6.]

RCW 43.340.040 Financing powers. In addition to other powers and duties prescribed in this chapter, the authority is empowered to:

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

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

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

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

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

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

(7) Implement the purposes of this chapter. [2002 c 365 s 5.]

RCW 43.340.050 Bonds. (1) The authority may issue its bonds in principal amounts which, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its purposes, the payment of debt service on its bonds, the establishment of reserves to secure the bonds, the costs of issuance of its bonds and credit enhancements, if any, and all other expenditures of the authority incident to and necessary to carry out its purposes or powers. The authority may also issue refunding bonds, including

advance refunding bonds, for the purpose of refunding previously issued bonds, and may issue other types of bonds, debt obligations, and financing arrangements necessary to fulfill its purposes or the purposes of this chapter. The bonds are investment securities and negotiable instruments within the meaning of and for the purposes of the uniform commercial code.

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

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

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

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

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

(7) The authority may, out of any fund available therefor, purchase its bonds in the open market. [2011 c 74 s 702; 2002 c 365 s 8.]

Application—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

RCW 43.340.060 Bonds—Obligations of authority—Not obligations of state. (1) Bonds issued under this chapter shall be issued in the name of the authority. The bonds shall not be obligations of the state of Washington and shall be obligations only of the authority, payable solely from the special fund or funds created by the authority for their payment.

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

(3) Contracts entered into by the authority shall be entered into in the name of the authority and not in the name of the state of Washington. The obligations of the authority under the contracts shall be obligations only of the authority and are not in any way obligations of the state of Washington. [2002 c 365 s 4.]

RCW 43.340.070 Bonds—Legal investments. Bonds issued under this chapter are hereby made securities in which all insurance companies, trust companies in their commercial departments, savings banks, cooperative banks, banking associations, investment companies, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in obligations of the state may properly and legally invest funds, including capital in their control or belonging to them. [2002 c 365 s 9.]

RCW 43.340.080 Sale of rights in master settlement agreement.

(1) The governor is authorized to sell and assign to the authority all of the state's right to receive a portion of the state's annual share of the revenue derived from the master settlement agreement for litigation brought by the state against tobacco product manufacturers. The portion of the state's share sold and assigned shall be determined by the governor in an amount necessary to generate net proceeds to the state for deposit to the tobacco securitization trust account under *RCW 43.340.120 up to four hundred fifty million dollars. The attorney general shall assist the governor in the review of all necessary documentation to effect the sale. The governor and the authority are authorized to take any action necessary to facilitate and complete the sale.

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

interest in the portion of the revenue from the master settlement agreement not so assigned.

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

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

(5) The terms of the state's sale to the authority of a portion of the master settlement agreement revenue shall provide that the portion shall be paid directly to the authority or its trustee or assignee. The revenue sold and assigned shall not be received in the treasury of the state and shall not be or deemed to be general state revenues as that term is used in Article VIII, section 1 of the state Constitution. [2002 c 365 s 7.]

***Reviser's note:** RCW 43.340.120 was repealed by 2012 c 198 s 26.

RCW 43.340.090 Limitation of liability. Members of the board and persons acting in the authority's behalf, while acting within the scope of their employment or agency, are not subject to personal liability resulting from carrying out the powers and duties conferred on them under this chapter. [2002 c 365 s 10.]

RCW 43.340.100 Bankruptcy—Contractual obligation to contain section. Prior to the date that is three hundred sixty-six days after which the authority no longer has any bonds outstanding, the authority is prohibited from filing a voluntary petition under chapter 9 of the federal bankruptcy code or such corresponding chapter or section as may, from time to time, be in effect, and a public official or organization, entity, or other person shall not authorize the authority to be or become a debtor under chapter 9 or any successor or corresponding chapter or sections during such periods. This section shall be part of any contractual obligation owed to the holders of bonds issued under this chapter. Any such contractual obligation shall not subsequently be modified by state law during the period of the contractual obligation. [2002 c 365 s 11.]

RCW 43.340.110 Dissolution of authority. The authority shall dissolve no later than two years from the date of final payment of all

of its outstanding bonds and the satisfaction of all outstanding obligations of the authority, except to the extent necessary to remain in existence to fulfill any outstanding covenants or provisions with bondholders or third parties made in accordance with this chapter. Upon dissolution of the authority, all assets of the authority shall be returned to the state and shall be deposited in the state general fund, and the authority shall execute any necessary assignments or instruments, including any assignment of any right, title, or ownership to the state for receipt of payments under the master settlement agreement. [2002 c 365 s 12.]

RCW 43.340.130 Appeals bonds—Amounts. (1) Except as provided in subsection (2) of this section, in order to secure and protect the moneys to be received as a result of the master settlement agreement in civil litigation under any legal theory involving a signatory, a successor of a signatory, or any affiliate of a signatory to the master settlement agreement, the supersedeas bond to be furnished in order to stay the execution of the judgment during the entire course of appellate review shall be set in accordance with applicable laws or court rules, except that the total bond that is required of all appellants collectively shall not exceed one hundred million dollars, regardless of the value of the judgment.

(2) If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid the payment of a judgment, a court may require the appellant to post a bond in an amount up to the amount of the judgment. [2006 c 246 s 2.]

Findings—Intent—2006 c 246: "(1) The legislature finds that:

(a) Over the past five years, Washington has received more than seven hundred million dollars from the tobacco master settlement agreement;

(b) While the state has securitized a portion of the moneys it was promised under the master settlement agreement, the remainder of the master settlement agreement payments is used to fund important health programs such as the state's basic health plan, children's health insurance, childhood vaccines, and public health;

(c) Litigation now pending in the state or filed in the future could result in damage awards against master settlement agreement signatories or their successors or affiliates that are so large that the defendants could obtain a stay of the execution of the judgment while they appeal only by declaring bankruptcy, rather than posting an appeal bond under state law;

(d) Should a master settlement agreement signatory declare bankruptcy, issues might be raised about whether that disrupts or jeopardizes the payments that fund important state programs;

(e) The legislature has the substantive obligation to raise revenue and to protect the financial well-being of the state and its citizens. Pursuant to that obligation, it is the legislature's responsibility to ensure the continued receipt of master settlement agreement funds to the maximum extent possible.

(2) Therefore, the legislature intends to place a maximum limit on the appeal bond a master settlement agreement signatory or a successor or affiliate of a master settlement agreement signatory can be required to post in litigation in order to stay execution of the

judgment without being forced into bankruptcy while it exercises its right to appeal an adverse judgment." [2006 c 246 s 1.]

Application—2006 c 246: "This act applies to all actions pending on or filed on or after June 7, 2006." [2006 c 246 s 3.]

RCW 43.340.902 Effective date—2002 c 365. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 4, 2002]. [2002 c 365 s 19.]