

HOUSE BILL No. 4850

May 24, 2007, Introduced by Rep. Virgil Smith and referred to the Committee on Appropriations.

A bill to amend 2005 PA 226, entitled
"Michigan tobacco settlement finance authority act,"
by amending section 8 (MCL 129.268).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8. (1) The state budget director with the approval of the
2 state administrative board may sell to the authority, and the
3 authority may purchase, for cash or other consideration and in 1 or
4 more installments, all or a portion of the state's tobacco receipts
5 pursuant to the terms of 1 or more sale agreements. In the
6 alternative, the state budget director with the approval of the
7 state administrative board may sell all or a portion of the state's
8 tobacco receipts for cash or other consideration to a person or
9 persons other than the authority, if the terms of the sale
10 agreement to sell the state's tobacco receipts are in the best
11 interests of this state and the net proceeds of the sale will not

1 exceed \$400,000,000.00. If the sale to a person or persons other
2 than the authority is in the best interests of this state, the
3 state administrative board shall approve the terms of the sale
4 agreement. The sale agreement or combined sale agreements shall
5 provide for the sale of that portion of the state's tobacco
6 receipts sufficient to provide net proceeds to the state in the
7 amount of ~~\$400,000,000.00~~ **\$500,000,000.00**, **OF** which **\$400,000,000.00**
8 shall be deposited to and held, used, and expended by the state
9 treasurer in the manner provided for in the Michigan trust fund
10 act, 2000 PA 489, MCL 12.251 to 12.256, **AND THE BALANCE SHALL BE**
11 **DEPOSITED IN THE GENERAL FUND.**

12 (2) Any sale agreement shall provide that the purchase price
13 payable by the authority to the state for TSRs shall consist of the
14 net proceeds and the residual interests, if any. In addition, any
15 sale shall be pursuant to 1 or more sale agreements that may
16 contain the terms and conditions considered appropriate by the
17 state budget director to carry out and effectuate the purposes of
18 this section, including without limitation covenants binding this
19 state in favor of the authority and its assignees, including
20 without limitation the owners of the bonds and benefited parties,
21 including a requirement that the state enforce the provisions of
22 the master settlement agreement that require the payment of the
23 TSRs, a requirement that the state enforce the provisions of the
24 qualifying statute, a provision authorizing inclusion of the
25 state's pledge and agreement, as set forth in section 11, in any
26 agreement with owners of the bonds or any benefited parties, and
27 covenants with respect to the application and use of the proceeds

1 of the sale of the state's tobacco receipts to preserve the tax
2 exemption of the interest on any bonds, if issued as tax-exempt.
3 The state budget director in any sale agreement may agree to, and
4 the authority may provide for, the assignment of the authority's
5 right, title, and interest under the sale agreement for the benefit
6 and security of the owners of bonds and benefited parties.

7 (3) A sale agreement may provide that the remedies available
8 to the authority and the bondholders for any breach of the pledges
9 and agreements of this state set forth in subsection (2) shall be
10 limited to injunctive relief and that this state shall be
11 considered to have diligently enforced the qualifying statute if
12 there has been no judicial determination by a court of competent
13 jurisdiction in this state, in an action commenced by a
14 participating tobacco manufacturer under the master settlement
15 agreement, that this state has failed to diligently enforce the
16 qualifying statute.

17 (4) The approval of the state administrative board shall be
18 made by a resolution adopted by the state administrative board and
19 that approval together with the sale agreement made pursuant to
20 that approval shall be conclusively presumed to be valid for all
21 purposes unless challenged in an action brought in the court of
22 appeals within 30 days after the adoption of the resolution. All
23 challenges shall be heard and determined as expeditiously as
24 possible with lawful precedence over other matters. Consideration
25 by the court of appeals shall be based solely on the record before
26 the state administrative board and briefs to the court shall be
27 limited to whether the resolution conforms to the constitution and

1 laws of this state and the United States and is within the
2 authority of the state administrative board under this act.

3 (5) A sale of all or a portion of the state's tobacco receipts
4 to the authority under a sale agreement shall be treated as a true
5 sale and absolute transfer of the state's tobacco receipts
6 transferred and not as a pledge or other security interest for any
7 borrowing. A sale agreement that expressly states that the transfer
8 of all or a portion of the state's tobacco receipts to the
9 authority is a sale or other absolute transfer signifies that the
10 transaction is a true sale and is not a secured transaction and
11 that title, legal and equitable, has passed to the authority. The
12 characterization of a sale as an absolute transfer by the
13 participants shall not be negated or adversely affected by the fact
14 that only a portion of the state's tobacco receipts are
15 transferred, or by the acquisition or retention by this state of a
16 residual interest, or by the participation by any state official as
17 a member or officer of the authority, or by whether the state is
18 responsible for collecting the TSRs or otherwise enforcing the
19 master settlement agreement or retains legal title to the portion
20 of the state's tobacco receipts for the purposes of these
21 collection activities, or by any characterization of the authority
22 or its obligations for purposes of accounting, taxation, or
23 securities regulation, or by any other factor whatsoever. A true
24 sale under this act exists regardless of whether the authority has
25 any recourse against this state, or any other term of the sale
26 agreement, including the fact that this state acts as a collector
27 of the state's tobacco receipts or the treatment of the transfer as

1 a financing for any purpose.

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

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