

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE SUBSTITUTE NO. 2 FOR

SENATE BILL NO. 1191

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR JACOB.

Offered April 23, 2002.

Senate Substitute No. 2 adopted, April 24, 2002.

Taken up for Perfection April 24, 2002. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

4827S.07P

AN ACT

To amend chapter 8, RSMo, by adding thereto twenty-three new sections relating to the Missouri tobacco settlement authority act, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 8, RSMo, is amended by adding thereto twenty-three new sections, to be known as sections 8.500, 8.505, 8.510, 8.515, 8.520, 8.525, 8.530, 8.535, 8.540, 8.545, 8.550, 8.552, 8.555, 8.557, 8.560, 8.565, 8.570, 8.572, 8.575, 8.580, 8.585, 8.590 and 8.595, to read as follows:

8.500. Sections 8.500 to 8.565 shall be known and may be cited as the "Missouri Tobacco Settlement Authority Act".

8.505. As used in sections 8.500 to 8.565, the following terms mean:

(1) "Authority", the Missouri tobacco settlement authority created by section 8.510;

(2) "Board", the governing board of the authority;

(3) "Bonds", bonds, notes, and other obligations and financing arrangements issued or entered into by the authority pursuant to sections 8.500 to 8.565;

(4) "Master settlement agreement", the master settlement agreement as defined in section 196.1000, RSMo;

(5) "Net proceeds", the amount of proceeds remaining following each sale of bonds which are not required by the authority to establish and fund reserve funds and

to pay the costs of issuance and other expenses and fees directly related to the authorization and issuance of bonds;

(6) "Program plan", the tobacco settlement program to provide funds for budget purposes to fund one-time expenditures, short-term revenue shortfalls, and to fund capital projects of any kind;

(7) "Sales agreement", any agreement authorized pursuant to sections 8.500 to 8.565 in which the state provides for the sale of a portion of the state's share to the authority;

(8) "State's share", all payments required to be made by tobacco product manufacturers to the state, and the state's rights to receive such payments, under the master settlement agreement;

(9) "Tax-exempt bonds", bonds issued by the authority that are accompanied by a written opinion of bond counsel to the authority that the bonds are excluded from the gross income of the recipients for federal income tax purposes;

(10) "Taxable bonds", bonds issued by the authority that are not accompanied by a written opinion of bond counsel to the authority that the bonds are excluded from the gross income of the recipients for federal income tax purposes; and

(11) "Tobacco securitization settlement trust fund", the tobacco securitization settlement trust fund created by section 8.550.

8.510. 1. There is hereby created the "Missouri Tobacco Settlement Authority", which shall constitute a body corporate and politic. The staff of the office of administration shall also serve as staff of the authority under the supervision of the commissioner of administration.

2. The purposes of the authority include all of the following:

(1) To implement and administer the securitization of a portion of the state's share as provided in sections 8.500 to 8.565;

(2) To enter into sales agreements;

(3) To issue bonds and enter into funding options, consistent with sections 8.500 to 8.565, including refunding and refinancing its debt and obligations;

(4) To sell, pledge, or assign, as security or consideration, a portion of the state's share sold to the authority pursuant to a sales agreement, to provide for and secure the issuance and repayment of its bonds;

(5) To invest funds available under sections 8.500 to 8.565;

(6) To enter into agreements with the state for the distribution of amounts due the state under any sales agreement;

(7) To refund and refinance the authority's debts and obligations, and to manage its funds, obligations, and investments as necessary and if consistent with its

purposes; and

(8) To implement the purposes of sections 8.500 to 8.565.

3. The authority shall not create any obligation of the state or any political subdivision of the state within the meaning of any constitutional or statutory debt limitation.

4. The authority shall not pledge the credit or taxing power of the state or any political subdivision of the state, or make its debts payable out of any moneys except those of the authority specifically pledged for their payment.

5. The authority shall not pledge or make its debts payable out of the moneys deposited in the tobacco securitization settlement trust fund.

8.515. Sections 8.500 to 8.565 shall not restrict or limit the powers that the authority has under any other law of the state, but is cumulative as to any such powers. A proceeding, notice, or approval is not required for the creation of the authority or the issuance of obligations or an instrument as security, except as provided in sections 8.500 to 8.565.

8.520. The powers of the authority are vested in and shall be exercised by a board consisting of five members: the governor, the lieutenant governor, the attorney general, president pro tem of the senate, and speaker of the house of representatives. The treasurer of the state shall serve as an ex officio member of the authority and shall serve as treasurer of the authority. Three members of the board constitute a quorum. The members shall elect a chairperson, vice chairperson, and secretary, annually, and other officers as the members determine necessary. Meetings of the board shall be held at the call of the chairperson or when a majority of the members so requests. The members of the board shall not receive compensation by reason of their membership on the board.

8.525. Members of the board and persons acting on 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 sections 8.500 to 8.565.

8.530. The authority has all the general powers to the extent necessary to carry out its purposes and duties and to exercise its specific powers to the extent necessary, including but not limited to all of the following powers:

(1) The power to issue its bonds and to enter into other funding options as provided in sections 8.500 to 8.565;

(2) The power to sue and be sued in its own name;

(3) The power to make and execute agreements, contracts, and other instruments, with any public or private person, in accordance with sections 8.500 to

8.565;

- (4) The power to hire and compensate legal counsel;**
- (5) The power to hire financial advisors and investment bankers, and other persons as necessary to fulfill its purpose;**
- (6) The power to invest or deposit moneys of or held by the authority in such deposits or investments as the state may invest;**
- (7) The power to create funds and accounts necessary to carry out its purposes;**
- (8) The power to procure insurance, other credit enhancements, and other financing arrangements, and to execute instruments and contracts and to enter into agreements convenient or necessary to facilitate financing arrangements of the authority and to fulfill the purposes of the authority under sections 8.500 to 8.565, including but not limited to such arrangements, instruments, contracts, and agreements as municipal bond insurance, liquidity facilities, interest rate swaps, exchange or cap or floor agreements, and letters of credit;**
- (9) The power to adopt rules, consistent with sections 8.500 to 8.565, as the board determines necessary;**
- (10) The power to acquire, own, hold, administer, and dispose of personal property;**
- (11) The power to determine, in connection with the issuance of bonds, and subject to the sales agreement, the terms and other details of financing, and the method of implementation of the financing;**
- (12) The power to make all expenditures which are incident and necessary to carry out its purposes and powers; and**
- (13) The power to perform any act not inconsistent with federal or state law necessary to carry out the purposes of the authority.**

8.535. 1. (1) The governor or the governor's designee shall be authorized to sell and assign to the authority, pursuant to one or more sales agreements, not to exceed thirty percent of the state's share to carry out the program plan pursuant to sections 8.500 to 8.565; provided, the aggregate amount of bonds issued to fund the program plan shall not exceed six hundred million dollars. The attorney general shall assist the governor in the preparation, modification and review of all documentation as may be necessary to effect such a sale and to implement the provisions of sections 8.500 to 8.565.

(2) Any sales agreement shall be consistent with sections 8.500 to 8.565. The terms and conditions of the sale established in such sales agreement may include but are not limited to any of the following:

- (a) A requirement that the state enforce, at the sole expense of the authority,**

the provisions of the master settlement agreement that require payment of the state's share that has been sold to the authority under a sales agreement;

(b) A requirement that the state not agree to any amendment of the master settlement agreement that materially and adversely affects the authority's ability to receive the state's share that has been sold to the authority under a sales agreement;

(c) A statement that the net proceeds from the sale of bonds shall be deposited in the tobacco securitization settlement trust fund established under section 8.550 and that in no event shall the amounts in the trust fund be available or be applied for payment of bonds or any claim against the authority or any debt or obligation of the authority; and

(d) An agreement that the effective date of the sale is the date of receipt of the bond proceeds by the authority.

2. Any sales made under this section shall be irrevocable during the time when bonds are outstanding under sections 8.500 to 8.565, and shall be a part of the contractual obligation owed to the bondholders. The sale shall constitute and be treated as a true sale and absolute transfer of the property so transferred and not as a pledge or other security interest 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 state's share is being sold, or by the state's acquisition or retention of an ownership interest in the residual assets.

3. On or after the effective date of such sale, the state shall not have any right, title, or interest in the portion of the master settlement agreement 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.

4. On or before the effective date of the sale, the state shall notify the escrow agent under the master settlement agreement of the sale and shall instruct the escrow agent that subsequent to that date, all payments constituting the portion sold shall be made directly to the authority.

5. The authority shall report to board of public buildings on or before the date of the sale, advising it of the status of the sale, its terms, and conditions.

8.540. Subject to the receipt of written approval of the board of public buildings, the authority may issue taxable bonds or tax-exempt bonds to provide for the implementation of sections 8.500 to 8.565 and may proceed with a securitization to maximize the transference of benefits and risks associated with the master settlement agreement.

8.545. 1. The proceeds from bonds issued by the authority shall be deposited in

the tobacco securitization settlement trust fund and applied to the governmental purposes provided in section 8.550 hereof. The proceeds from such bonds may be used for any governmental purpose. In connection with the issuance of bonds and subject to the terms of the sales agreement, the authority shall determine the terms and other details of the financing and the method of implementation of sections 8.500 to 8.565. Bonds issued pursuant to this section may be secured by a pledge of not more than thirty percent of the state's share. 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 sections 8.500 to 8.565.

2. 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 interest on its bonds, the establishment of reserves to secure the bonds, the costs of issuance of its bonds, and all other expenditures of the authority incident to and necessary to carry out its purposes or powers. The bonds are investment securities and negotiable instruments within the meaning of and for the purposes of the uniform commercial code.

3. Bonds issued by the authority are payable solely and only out of the moneys, assets, or revenues pledged by the authority and are not a general obligation or indebtedness of the authority or an obligation or indebtedness of the state or any political subdivision of the state. The authority shall not pledge the credit or taxing power of the state or any political subdivision of the state, or create a debt or obligation of the state, or make its debts payable out of any moneys except those of the authority, excluding those moneys deposited in the tobacco securitization settlement trust fund.

4. Bonds issued by the authority shall state on their face that they are payable both as to principal and interest solely out of the assets of the authority pledged for their purpose and do not constitute an indebtedness of the state or any political subdivision of the state; are secured solely by and payable solely from assets of the authority pledged for such purpose; constitute neither a general, legal, or moral obligation of the state or any of its political subdivisions; and that the state has no obligation or intention to satisfy any deficiency or default of any payment of the bonds.

5. Any amount pledged by the authority to be received under the master settlement agreement shall be valid and binding at the time the pledge is made. Amounts so pledged and then or thereafter received by the authority 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 of the authority or any other instrument by which a pledge is created need not be recorded or filed to perfect such pledge.

6. The bonds shall comply with all of the following:

(1) The bonds shall be in a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, as the board prescribes in the resolution authorizing their issuance;

(2) The bonds shall be fully negotiable instruments under the laws of the state. The sale of bonds issued pursuant to this section may be completed on a negotiated or competitive basis, but in no event shall such bonds be sold for less than ninety-five percent of the par value thereof, plus accrued interest; and

(3) The bonds shall be subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest which may be fixed or variable during any period the bonds are outstanding, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with sections 8.500 to 8.565 and as determined by resolution of the board authorizing their issuance.

7. Proposals for services utilized by the authority shall be solicited and evaluated by the authority from all qualified entities.

8. All banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance companies and associations, and all executors, administrators, guardians, trustees, and other fiduciaries legally may invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds issued pursuant to sections 8.500 to 8.565.

9. Following the approval of the board of public buildings, bonds may be issued by the authority pursuant to the provisions of sections 8.500 to 8.530 pursuant to a resolution adopted by the affirmative vote of two-thirds of the members of the board and no other proceedings shall be required therefor. However, a resolution authorizing the issuance of bonds may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds by an appropriate certificate of the authorized officer.

10. The state reserves the right at any time to alter, amend, repeal, or otherwise change the structure, organization, programs, or activities of the authority,

including the power to terminate the authority, except that a law shall not be enacted that impairs any obligation made pursuant to a sales agreement or any contract entered into by the authority with or on behalf of the holders of the bonds to the extent that any such law would contravene article I, section 13 of the constitution of the state of Missouri or article I, section 10 of the constitution of the United States.

8.550. 1. A tobacco securitization settlement trust fund is established, separate and apart from all other public moneys or funds of the state, under the control of the authority. The fund shall consist of moneys paid to the authority and not pledged to the payment of bonds or otherwise obligated. Such moneys shall include but are not limited to payments received from the master settlement agreement which are not pledged to the payment of bonds or which are subsequently released from a pledge to the payment of any bonds; payments which, in accordance with any sales agreement with the state, are to be paid to the state and not pledged to the bonds, including that portion of the proceeds of any bonds designated for purchase of a portion of the state's share, which are designated for deposit in the fund, together with all interest, dividends, and rents on the bonds; and all securities or investment income and other assets acquired by and through the use of the moneys belonging to the fund and any other moneys deposited in the fund. Moneys in the fund are to be used solely and only for the payment of all amounts due and to become due to the state, and shall not be used for any other purpose. Such moneys shall not be available for the payment of any claim against the authority or any debt or obligation of the authority.

2. There shall be established within the tobacco securitization settlement trust fund a "qualified tax-exempt expenditure account" and a "taxable expenditure account". The net proceeds of all tax-exempt bonds shall be deposited in the qualified tax-exempt expenditure account. The net proceeds of all taxable bonds shall be deposited in the taxable expenditure account. Moneys deposited in the qualified tax-exempt expenditure account shall be used to reimburse the state for expenditures which are permissible reimbursement expenditures under federal tax law governing tax-exempt bonds. Upon such reimbursement such moneys shall be transferred by the authority to the state treasurer for deposit in the state general revenue fund and applied as provided in subsection 4 of this section. Moneys deposited in the taxable expenditure account shall be transferred to the state treasurer for deposit in the state general revenue fund.

3. The treasurer of the authority shall act as custodian and trustee of the fund and shall administer the fund as directed by the authority. The treasurer of the authority shall do all of the following: hold, invest and disburse funds; sell any securities or other property held by the fund and reinvest the proceeds as directed by

the authority, when deemed advisable by the authority for the protection of the fund or the preservation of the value of the investment. Such sale of securities or other property held by the fund shall only be made with the advice of the board in the manner and to the extent provided in sections 8.500 to 8.565 with regard to the purchase of investments; subscribe, at the direction of the authority, for the purchase of securities for future delivery in anticipation of future income; pay for securities, as directed by the authority, on the receipt of the purchasing entity's paid statement or paid confirmation of purchase.

4. All moneys paid to or deposited in the fund are available to the authority to be used in accordance with sections 8.500 to 8.565, including but not limited to all of the following:

(1) For payment of amounts due to the state pursuant to the terms of the sales agreements entered into between the state and the authority;

(2) For purposes of reimbursing the state for expenditures which are permissible reimbursement expenditures under federal tax law governing tax-exempt bonds; provided, such moneys are transferred at the time of such reimbursement to the state treasurer for deposit in the state general revenue fund and used by the state treasurer solely to pay the costs of implementing the program plan;

(3) For transfer to the state general revenue fund for the payment of the costs of implementing the program plan;

(4) For payment of the costs of issuing any bonds; and

(5) For payment of the costs of the authority in implementing sections 8.500 to 8.565.

8.552. Moneys of the authority, except as otherwise provided in sections 8.500 to 8.565 or specified in a trust indenture or resolution pursuant to which the bonds are issued, shall be paid to the authority and shall be deposited in a financial institution designated by the authority. The moneys shall be withdrawn on the order of the authority or its designee. Deposits shall be secured in the manner determined by the authority. All moneys of the authority or moneys held by the authority shall be invested and held in the name of the authority, whether they are held for the benefit, security, or future payment to holders of bonds or to the state. All such moneys and investments shall be considered moneys and investments of the authority with the exception of moneys in the tax-exempt bond proceeds restricted capital funds account of the tobacco securitization settlement trust fund which are moneys of the state.

8.555. The authority and contracts entered into by the authority in carrying out its public and essential governmental functions are exempt from the laws of the

state which provide for competitive bids.

8.557. The authority shall submit to the general assembly, annually, a report covering its operations and accomplishments; receipts and expenditures, assets and liabilities, a schedule of its bonds outstanding and any other information the authority deems necessary.

8.560. Prior to the date which 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 pursuant to chapter 9, RSMo, 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 pursuant to chapter 9, RSMo, or any successor or corresponding chapter or sections during such periods. The provisions of this section shall be part of any contractual obligation owed to the holders of bonds issued under sections 8.500 to 8.565. Any such contractual obligation shall not subsequently be modified by state law, during the period of the contractual obligation.

8.565. The authority shall dissolve no later than two years from the date of final payment of all 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 sections 8.500 to 8.565. Upon dissolution of the authority, all assets of the authority shall be returned to the state and shall be deposited in the state's general revenue 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.

8.570. The board of public buildings may issue bonds payable from not more than thirty percent of the state's share; provided, the aggregate amount of bonds issued to fund the program plan shall not exceed six hundred million dollars as provided in section 8.535. The proceeds from bonds issued by the board of public buildings under this section may be deposited directly to the general revenue fund or deposited to the tobacco bond proceeds fund hereby created and then transferred to the general revenue fund. Repayment of any bonds issued pursuant to this section may be made solely from such portion of the state's share, an appropriation specifically authorized for such purpose or from any appropriation from the state's share for any other purpose.

8.572. Any bonds issued by the board of public buildings pursuant to sections 8.570 to 8.590 shall not be deemed to be an indebtedness of the state of Missouri or of the board of public buildings, or of the individual members of the board of public

buildings, and shall not be deemed to be an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness.

8.575. Bonds issued pursuant to the provisions of sections 8.570 to 8.590 shall be of such denomination or denominations, shall bear such rate or rates of interest not to exceed fifteen percent per annum, and shall mature at such time or times within forty years from the date thereof, as the board of public buildings determines. The bonds may be either serial bonds or term bonds. The sale of bonds issued pursuant to this section may be completed on a negotiated or competitive basis, but in no event shall such bonds be sold for less than ninety-five percent of the par value thereof, and accrued interest. The bonds, when issued and sold, shall be negotiable instruments within the meaning of the law merchant and the negotiable instruments law, and the interest thereon shall be exempt from income taxes pursuant to the laws of the state.

8.580. 1. Bonds issued by the board of public buildings pursuant to the provisions of sections 8.570 to 8.590 may be refunded, in whole or in part, at any time whenever the board of public buildings determines that such a refunding is in the best interest of the state or the board of public buildings.

2. For the purpose of refunding any bonds issued hereunder, including refunding bonds, the board of public buildings may make and issue refunding bonds in the amount necessary to pay off and redeem the bonds to be refunded together with unpaid and past due interest thereon and any premium which may be due under the terms of the bonds, together also with the cost of issuing the refunding bonds, and may sell the same in like manner as is herein provided for the sale of bonds being refunded. Refunding bonds issued pursuant to sections 8.500 to 8.590 shall be payable in not more than forty years from the date thereof and shall bear interest at a rate not to exceed fifteen percent per annum.

3. The refunding bonds shall be payable from the same sources as were pledged to the payment of the bonds refunded thereby and in the discretion of the board of public buildings, may be payable from any other sources which pursuant to sections 8.500 to 8.590 may be pledged to the payment of revenue bonds issued hereunder. Bonds of two or more issues may be refunded by a single issue of refunding bonds.

8.585. The board of public buildings may prescribe the form details and incidents of the bonds, and make the covenants that in its judgment are advisable or necessary properly to secure the payment thereof; but the form, details, incidents and covenants shall not be inconsistent with any of the provisions of sections 8.570 to 8.590. Such bonds may have the seal of the board of public buildings impressed

thereon or affixed thereto or imprinted or otherwise reproduced thereon. If such bonds shall be authenticated by the bank or trust company acting as registrar for such bonds by the manual signature of a duly authorized officer or employee thereof, the duly authorized officers of the board of public buildings executing and attesting such bonds, may all do so by facsimile signature of public officials law, sections 105.273 to 105.278, RSMo, when duly authorized by resolution of the board of public buildings and the provisions of section 108.175, RSMo, shall not apply to such bonds. The holder or holders of any bond or bonds issued hereunder or of any coupons representing interest accrued thereon may, by proper civil action either at law or in equity, compel the board of public buildings to perform all duties imposed upon it and also to enforce the performance of any and all other covenants made by the board of public buildings in the issuance of the bonds.

8.590. Bonds may be issued pursuant to the provisions of sections 8.580 to 8.598 pursuant to a resolution adopted by the affirmative vote of two-thirds of the members of the board of public buildings and no other proceedings shall be required therefor.

8.595. Sections 8.500 to 8.590, being deemed necessary for the public health, welfare, peace and safety shall be liberally construed to effect its purpose.

Section B. Because immediate action is necessary to ensure a balanced state budget, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect on May 17, 2002, or upon its passage and approval by the governor, whichever later occurs.

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