

## CHAPTER 12E

### TOBACCO SETTLEMENT AUTHORITY

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#### 12E.1 Title.

[This chapter](#) shall be known and may be cited as the “*Tobacco Settlement Authority Act*”. 2000 Acts, ch 1208, §1, 25

#### 12E.2 Definitions.

As used in [this chapter](#), unless the context otherwise requires:

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 pursuant to [this chapter](#).
4. “*Financial institution*” means a bank or credit union as defined in [section 12C.1](#).
5. “*Interest rate agreement*” means an interest rate swap or exchange agreement, an agreement establishing an interest rate floor or ceiling or both, or any similar agreement. Any such agreement may include the option to enter into or cancel the agreement or to reverse or extend the agreement.
6. “*Master settlement agreement*” means the master settlement agreement as defined in [section 453C.1](#).
7. “*Net proceeds*” means 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.
8. “*Notes*” means notes, warrants, loan agreements, and all other forms of evidence of indebtedness authorized under [this chapter](#).
9. “*Program plan*” means the tobacco settlement program plan dated February 14, 2001, including exhibits to the program plan, submitted by the authority to the legislative council and the executive council, to provide the state with a secure and stable source of funding for the purposes designated by [section 12E.3A](#) and other provisions of [this chapter](#).
10. “*Qualified investments*” means investments of the authority authorized pursuant to [this chapter](#).
11. “*Sales agreement*” means any agreement authorized pursuant to [this chapter](#) in which the state provides for the sale of all or a portion of the state’s share to the authority.
12. “*State’s share*” means all of the following:
  - a. 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.
  - b. To the extent that such amounts have been assigned to the state, all payments of attorney fees required to be made by tobacco product manufacturers under the master settlement agreement, and all rights to receive such attorney fees.
13. “*Tax-exempt bonds*” means bonds issued by the authority that are accompanied by a

written opinion of legal counsel to the authority that the bonds are excluded from the gross income of the recipients for federal income tax purposes.

14. “*Taxable bonds*” means bonds issued by the authority that are not accompanied by a written opinion of legal counsel to the authority that the bonds are excluded from the gross income of the recipients for federal income tax purposes.

15. “*Tobacco settlement trust fund*” means the tobacco settlement trust fund created in [this chapter](#).

2000 Acts, ch 1208, §2, 25; 2000 Acts, ch 1232, §13, 15; 2001 Acts, ch 164, §2 – 5, 21; 2008 Acts, ch 1186, §9, 10, 19

### **12E.3 Tobacco settlement authority — created — purposes — powers — restrictions.**

1. A 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.

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

a. To implement and administer the program plan and to establish a stable source of revenue to be used for the purposes designated in [section 12E.3A](#) and other provisions of [this chapter](#).

b. To enter into sales agreements.

c. To issue bonds and enter into funding options, consistent with [this chapter](#), including refunding and refinancing its debt and obligations.

d. To sell, pledge, or assign, as security or consideration, all or 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.

e. To invest funds available under [this chapter](#) to provide for a source of revenue in accordance with the program plan.

f. To enter into agreements with the state for the periodic distribution of amounts due the state under any sales agreement.

g. 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 purpose.

h. To sell, pledge, or assign, as security or consideration, all or a portion of the state’s share to implement alternative funding options.

i. To implement the purposes of [this chapter](#).

3. The authority shall invest its funds and accounts in accordance with [this chapter](#) and shall not take action or invest in any manner that would cause the state to become a stockholder in any corporation or that would cause the state to assume or agree to pay the debt or liability of any corporation in violation of the United States Constitution or the Constitution of the State of Iowa.

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

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

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

2000 Acts, ch 1208, §3, 25; 2000 Acts, ch 1232, §14, 15; 2001 Acts, ch 164, §6, 21; 2008 Acts, ch 1186, §11, 19

### **12E.3A Endowment for Iowa’s health account — purposes.**

1. The general assembly reaffirms and reenacts the purposes stated for the use of moneys deposited in the healthy Iowans tobacco trust, as the purposes were enacted in 2000 Iowa Acts, ch. 1232, section 12, and codified in [section 12.65](#), Code 2007, as the purposes for the endowment for Iowa’s health account. The purposes include those purposes related to health care, substance abuse treatment and enforcement, tobacco use prevention and control, and other purposes related to the needs of children, adults, and families in the state.

2. Any net proceeds from the sale of taxable bonds or tax-exempt bonds issued to provide

funds for the purposes stated in [section 12.65](#), Code 2007, and as reaffirmed and reenacted in [subsection 1](#) shall continue to be used for such purposes, including but not limited to any such proceeds deposited in the endowment for Iowa's health account or transferred or otherwise credited to the general fund of the state.

2008 Acts, ch 1186, §12, 19

Referred to in [§12E.2](#), [12E.3](#), [12E.9](#), [12E.10](#), [12E.11](#), [12E.12](#)

#### **12E.4 Powers not restricted — law complete in itself.**

[This chapter](#) shall not restrict or limit the powers which the authority has under any other law of this 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 [this chapter](#).

2000 Acts, ch 1208, §4, 25

#### **12E.5 Governing board.**

1. The powers of the authority are vested in and shall be exercised by a board consisting of the treasurer of state, the auditor of state, and the director of the department of management. Notwithstanding the provisions of [section 12.30](#), [subsection 2](#), regarding ex officio nonvoting status, the treasurer of state shall act as a voting member of the authority.

2. Two members of the board constitute a quorum.

3. The members shall elect a chairperson, vice chairperson, and secretary, annually, and other officers as the members determine necessary. The treasurer of state shall serve as treasurer of the authority.

4. Meetings of the board shall be held at the call of the chairperson or when a majority of the members so requests.

5. The members of the board shall not receive compensation by reason of their membership on the board.

2000 Acts, ch 1208, §5, 25

#### **12E.6 Staff — assistance by state officers, agencies, and departments.**

1. The staff of the office of the treasurer of state shall also serve as staff of the authority under the supervision of the treasurer.

2. State officers, agencies, and departments may render services to the authority within their respective functions, as requested by the authority.

2000 Acts, ch 1208, §6, 25

#### **12E.7 Limitation of liability.**

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 [this chapter](#).

2000 Acts, ch 1208, §7, 25

#### **12E.8 General powers.**

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

a. The power to issue its bonds and to enter into other funding options as provided in [this chapter](#).

b. The power to have perpetual succession as a public instrumentality and agency of the state, until dissolved in accordance with [this chapter](#).

c. The power to sue and be sued in its own name.

d. The power to make and execute agreements, contracts, and other instruments, with any public or private person, in accordance with [this chapter](#).

e. The power to hire and compensate legal counsel, notwithstanding [chapter 13](#).

f. The power to hire investment advisors and other persons as necessary to fulfill its purpose.

g. The power to invest or deposit moneys of or held by the authority in any manner determined by the authority, notwithstanding [chapter 12B](#) or [12C](#).

h. 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 [this chapter](#), including but not limited to such arrangements, instruments, contracts, and agreements as municipal bond insurance, liquidity facilities, interest rate agreements, and letters of credit.

i. The power to accept appropriations, gifts, grants, loans, or other aid from public or private entities.

j. The power to adopt rules, consistent with [this chapter](#) and in accordance with [chapter 17A](#), as the board determines necessary.

k. The power to acquire, own, hold, administer, and dispose of property.

l. 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 program plan.

m. The power to perform any act not inconsistent with federal or state law necessary to carry out the purposes of the authority.

2. The authority is exempt from the requirements of [chapter 8A, subchapter III](#).

2000 Acts, ch 1208, §8, 25; 2001 Acts, ch 164, §7, 8, 21; 2003 Acts, ch 145, §132

#### **12E.9 Authorization of the sale of rights in the master settlement agreement.**

1. a. The governor or the governor's designee shall sell and assign all or a portion of the state's share to the authority pursuant to one or more sales agreements for the purpose of securitization as described in the program plan and as specified in [section 12E.10](#). The attorney general shall assist the governor in the preparation and review of all necessary documentation to effect such a sale as soon as reasonably practicable.

b. Any sales agreement shall be consistent with the program plan and [this chapter](#). The terms and conditions of the sale established in such sales agreement may include but are not limited to any of the following:

(1) 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.

(2) 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.

(3) An agreement that the anticipated use by the state of bond proceeds received pursuant to the sales agreement shall be for capital projects, certain debt service on outstanding obligations that funded capital projects, payment of attorney fees related to the master settlement agreement, and to provide a secure and stable source of funding to the state for purposes designated by [section 12E.3A](#) and other provisions of [this chapter](#).

(4) A statement that the net proceeds from the sale of bonds shall be deposited in the tobacco settlement trust fund established under [section 12E.12](#) 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.

(5) A requirement that the net proceeds received by the authority from the sale of any tax-exempt bonds issued to provide funds for capital projects, certain debt service, and attorney fees related to the master settlement agreement be paid by the authority to the state as consideration for the sale of that portion of the state's share, that such net proceeds be deposited by the state upon receipt in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund, and that such proceeds are to be held by the authority solely for the benefit of the state, subject to annual appropriation by the state in accordance with [section 12E.10, subsection 1](#), paragraph "b".

(6) A requirement that the net proceeds received by the authority from the sale of taxable bonds or tax-exempt bonds issued to provide funds for the purposes specified in [section 12E.3A](#) be deposited in the endowment for Iowa's health account of the tobacco settlement

trust fund as moneys of the authority until transferred to the state pursuant to [section 12E.12, subsection 1](#), paragraph “b”, subparagraph (3). Each amount transferred shall be the consideration received by the state for that portion of the state’s share.

(7) An agreement that the effective date of the sale is the date of receipt of the bond proceeds by the authority and the deposits of the net proceeds of the tax-exempt bonds and any taxable bonds in the respective accounts of the tobacco settlement trust fund.

2. The sale made under [this section](#) shall be irrevocable during the time when bonds are outstanding under [this chapter](#), 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, the treasurer of state, and the attorney general shall report to the legislative council and the executive council on or before the date of the sale, advising them of the status of the sale, its terms, and conditions.

2000 Acts, ch 1208, §9, 25; 2001 Acts, ch 164, §9, 10, 21; 2008 Acts, ch 1186, §13, 19

Deposit of state’s share in healthy Iowans tobacco trust under §12.65 until effective date of sale; 2001 Acts, ch 164, §20

#### **12E.10 Tobacco settlement program plan.**

1. *a.* (1) The authority shall implement the program plan and shall proceed with a securitization to maximize the transference of risks associated with the master settlement agreement.

(2) The authority shall issue tax-exempt bonds as necessary in amounts determined by the authority sufficient to provide net proceeds for deposit in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund, to be used for capital projects, certain debt service on outstanding obligations which funded capital projects, and attorney fees related to the master settlement agreement.

(3) The authority may also issue taxable bonds or tax-exempt bonds to provide additional amounts to be used for the purposes specified in [section 12E.3A](#).

(4) Notwithstanding subparagraphs (1) and (2), the authority is not required to issue tax-exempt bonds if the authority determines that the issuance would not be in the best interest of the state due to market conditions.

*b.* It is the expectation of the state that not less than eighty-five percent of the proceeds of any issue of tax-exempt bonds will be expended within five years from the effective date of the sale, consistent with the requirements of federal law, and that the specific capital projects, debt service, and attorney fees payments shall be determined annually through appropriations authorized by a constitutional majority of each house of the general assembly and approved by the governor.

*c.* The authority may issue tax-exempt bonds if the securitization of any remaining tobacco settlement payments will result in the deposit of net proceeds of not less than one hundred eighty-three million dollars for tax-exempt bonds issued after July 1, 2008.

2. The authority shall periodically report to the legislative council and the governor regarding implementation of the program plan and shall, prior to any public offering of bonds, submit a report to the legislative council and the governor describing the terms of the proposed bond issue.

3. Any amendment to the program plan shall be authorized by a constitutional majority of each house of the general assembly and approved by the governor.

4. To the extent that any provision of the program plan is inconsistent with [this chapter](#), the provisions of [this chapter](#) shall govern.

2000 Acts, ch 1208, §10, 25; 2001 Acts, ch 164, §11, 21; 2008 Acts, ch 1179, §45 – 47; 2008 Acts, ch 1186, §14, 19

Referred to in [§12E.9](#)

#### **12E.11 Authority — bonds.**

1. The authority may issue bonds and, if bonds are issued, shall make the proceeds from the bonds available to the state pursuant to the sales agreement to fund capital projects, certain debt service on outstanding obligations that funded capital projects, and attorney fees related to the master settlement agreement, and to provide a secure and stable source of funding to the state, consistent with the purposes of [section 12E.3A](#) and other provisions of [this chapter](#). 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 the program plan. Bonds issued pursuant to [this section](#) may be secured by a pledge of all or a portion of the state's share and any moneys derived from the state's share, and any other sources available to the authority with the exception of moneys in the tobacco settlement trust fund. 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](#).

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, [chapter 554](#).

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 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 settlement trust fund.

4. Bonds 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 proceeds of bonds issued by the authority and not required for deposit in the tobacco settlement trust fund may be invested in any manner approved by the board and specified in the trust indenture or resolution pursuant to which the bonds must be issued, notwithstanding any other provision to the contrary.

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

a. 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.

b. The bonds shall be fully negotiable instruments under the laws of this state and may be sold at prices, at public or private sale, and in a manner as prescribed by the board. Chapters 73A, 74, 74A, and 75 shall not apply to the sale or issuance of bonds under this chapter.

c. 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 this chapter and as determined by resolution of the board authorizing their issuance.

8. The bonds issued under this chapter are securities in which insurance companies and associations and other persons engaged in the business of insurance; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital, in their control or belonging to them.

9. Bonds must be authorized by a resolution of the board. 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. To comply with federal law with respect to the issuance of bonds, the interest of which is tax-exempt pursuant to the Internal Revenue Code, the authority may issue a certain series of bonds, or periodically issue several series of bonds, so that interest on the bonds remains exempt from federal taxation or to comply with the purposes specified in this chapter.

11. 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 21, of the Constitution of the State of Iowa or Article I, section 10, of the Constitution of the United States.

2000 Acts, ch 1208, §11, 25; 2001 Acts, ch 164, §12 – 14, 21; 2005 Acts, ch 3, §10; 2008 Acts, ch 1186, §15, 19

#### **12E.12 Tobacco settlement trust fund — established — investment — liability.**

1. a. A tobacco 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 all or 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.

b. The fund shall consist of the following accounts:

(1) The tax-exempt bond proceeds restricted capital funds account. The net proceeds of tax-exempt bonds issued to provide funds for capital projects, certain debt service, and attorney fees related to the master settlement agreement which the state treasurer is authorized and directed to deposit on behalf of the state shall be deposited in the account and shall be used to fund capital projects, certain debt service, and the payment of attorney fees

related to the master settlement agreement. With respect to capital projects, it is the intent of the general assembly to fund capital projects that qualify as vertical infrastructure projects as defined in [section 8.57, subsection 6](#), paragraph “c”, to the extent practicable in any fiscal year and without limiting other qualifying capital expenditures considered and approved by a constitutional majority of each house of the general assembly and the governor.

(2) The FY 2009 tax-exempt bond proceeds restricted capital funds account. The net proceeds of tax-exempt bonds issued after July 1, 2008, as a result of the securitization of any remaining tobacco settlement payments to provide funds for capital projects which the treasurer of state is authorized and directed to deposit on behalf of the state shall be deposited in the account and shall be used to fund capital projects. With respect to capital projects, it is the intent of the general assembly to fund capital projects that qualify as vertical infrastructure projects as defined in [section 8.57, subsection 6](#), paragraph “c”, to the extent practicable in any fiscal year and without limiting other qualifying capital expenditures considered and approved by a constitutional majority of each house of the general assembly and the governor.

(3) The endowment for Iowa’s health account.

(a) The net proceeds of any taxable bonds or tax-exempt bonds issued to provide funds for the purposes specified in [section 12E.3A](#), which the authority is directed to deposit in the account, any portion of the state’s share which is not sold to the authority, and any other moneys appropriated by the state for deposit in the account shall be deposited in the account and shall be used for the purposes specified in [section 12E.3A](#).

(b) For each fiscal year beginning July 1, 2009, the moneys deposited in the endowment for Iowa’s health account of the tobacco settlement trust fund are transferred to the rebuild Iowa infrastructure fund.

2. 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:

a. Hold the funds.

b. Invest the portion of the funds which, as deemed by the authority, is not necessary for current payment of sums to the state under [this chapter](#) or the program plan.

c. Disburse funds, if directed by the authority.

d. 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 [this chapter](#) with regard to the purchase of investments.

e. Subscribe, at the direction of the authority, for the purchase of securities for future delivery in anticipation of future income. Such securities shall be paid for by such anticipated income or from funds from the sale of securities or other property held by the fund.

f. Pay for securities, as directed by the authority, on the receipt of the purchasing entity’s paid statement or paid confirmation of purchase.

3. The authority shall execute the disposition and investment of moneys in the fund in accordance with the investment policy and goal statement established by the board.

a. In establishing the investment policy and goal statement of the fund, the standard utilized by the board shall be the exercise of judgment and care, under the prevailing circumstances, which persons of prudence, discretion, and intelligence exercise in the management of their own financial affairs, not for the purpose of speculation, but with regard to the permanent disposition of the funds, considering the probable income, as well as the probable safety, of their capital.

b. Within the limitations of the standard prescribed in [this subsection](#) and the program plan, the treasurer of the authority, the authority, and the board may acquire and retain any type of property or investment which persons of prudence, discretion, and intelligence would acquire or retain for their own financial interests.

c. The authority and the board shall give appropriate consideration to those facts and circumstances that the authority and board know or should know are relevant to the particular investment or investment policy involved, including the role the investment plays



in the total value of the fund. For the purposes of this paragraph, “*appropriate consideration*” includes, but is not limited to, a determination by the authority and the board that the particular investment or investment policy is reasonably designed to further the purposes of the tobacco settlement program plan, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment or investment policy and consideration of all of the following as they relate to the tobacco settlement trust fund:

- (1) The composition of the fund with regard to diversification.
- (2) The liquidity and current return of the investments in the fund relative to the anticipated cash flow requirements of the program plan.
- (3) The projected return of the investments relative to the funding objectives of the program plan.

d. Investments of moneys in the funds are not subject to [sections 73.15 through 73.21](#).

e. If consistent with the investment policy established by the board, the authority may invest moneys of or held by the authority in structured notes and investment agreements, the repayment of the principal amount of which is protected or guaranteed.

4. The authority, its staff, members of the board, and the treasurer of the authority are not personally liable for actions or omissions under [this chapter](#) that do not involve malicious or wanton misconduct even if those actions or omissions violate the standards established in [this section](#).

5. Except as provided in [this section](#), if there is loss to the fund, the treasurer, the authority, the board, and the staff are not personally liable, and the loss shall be charged against the fund. The amount required to cover a loss may be paid from the fund.

6. a. Expenses incurred in the sale and purchase of securities belonging to the fund shall be charged to the fund, and the amount required for the investment management expenses may be paid from the fund, subject to the limitations stated in [this subsection](#). The amount paid for investment management expenses for a fiscal year under [this section](#) shall not exceed the reasonable and customary charge to similar funds for similar purposes. The authority shall report the investment management expenses for a fiscal year as a percent of the market value of the fund in the annual report to the governor submitted pursuant to [section 12E.15](#).

b. A person who has entered into a contract with the authority for investment management purposes shall meet the requirements for doing business in Iowa sufficient to be subject to taxation under the rules of the department of revenue.

7. All moneys paid to or deposited in the fund are available to the authority to be used for the exclusive purpose of the program plan in accordance with [this chapter](#), including but not limited to all of the following:

a. For payment of amounts due to the state pursuant to the terms of the sales agreements entered into between the state and the authority.

b. For payment of other amounts provided for in the program plan.

c. For payment of the costs of administering the program plan and the costs of the authority.

8. With respect to the payment of certain debt service, the debt service to be paid shall be those installments of debt service on bonds selected by the treasurer of state and identified in the authority’s tax certificate delivered at the time of the issuance of the bonds issued pursuant to [this chapter](#), or as otherwise selected by the treasurer of state. Once the bonds and the installments of debt service thereon are so selected, that debt service and bonds shall not be paid, or provided to be paid, from any other source including the state or any of its departments or agencies. Provided, however, that if funds are not appropriated to pay debt service on such bonds when due, the issuing agency shall pay the debt service from any available source as provided in the bond covenants. To the extent that [this section](#) does not allow proceeds of previously issued refunding bonds to be applied for the purpose of the refunding, the issuing agency may expend such proceeds to improve, remodel, or repair buildings or other infrastructure upon authorization of the issuing agency’s authority.

9. Annually, on or before January 15 of each year, a state agency that received an appropriation from the tobacco settlement trust fund shall report to the legislative services agency and the department of management the status of all projects completed or in progress. The report shall include a description of the project, the progress of work

completed, the total estimated cost of the project, a list of all revenue sources being used to fund the project, the amount of funds expended, the amount of funds obligated, and the date the project was completed or an estimated completion date of the project, where applicable.

2000 Acts, ch 1208, §12, 25; 2001 Acts, ch 164, §15, 16, 21; 2002 Acts, 2nd Ex, ch 1001, §35, 46; 2002 Acts, 2nd Ex, ch 1003, §229, 233; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §94, 159; 2006 Acts, ch 1179, §38; 2008 Acts, ch 1179, §48, 49; 2008 Acts, ch 1186, §16, 19; 2009 Acts, ch 184, §31, 41

Referred to in [§12E.9](#)

See annual Iowa Acts for temporary exceptions, changes, or other noncodified enactments modifying these statutory provisions

Creation of endowment for Iowa's health restricted capitals fund for the receipt of tax exempt bond proceeds from the November 30, 2005, bond issuance authorized by the tobacco settlement authority; 2006 Acts, ch 1179, §16

For provisions requiring transfer of unencumbered or unobligated balance of endowment for Iowa's health account and the healthy Iowans tobacco trust at the close of fiscal year beginning July 1, 2007, and ending June 30, 2008, see 2008 Acts, ch 1186, §7, 8; 2009 Acts, ch 184, §26, 28

### **12E.13 Moneys of the authority.**

1. Moneys of the authority, except as otherwise provided in [this chapter](#) 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.

2. The auditor of state or the auditor's designee, which may include a person hired by the auditor with the approval of the board, may periodically examine the accounts and books, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other records and papers relating to its financial standing. The authority shall pay the costs of any such examination.

3. The authority may contract with the holders of its bonds relating to the custody, collection, security, investment, and payment of moneys of the authority, and relating to the moneys held in trust or otherwise for payment of bonds, with the exception of moneys in the tobacco settlement trust fund. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of the moneys may be secured in the same manner as moneys of the authority, and financial institutions and trust companies may provide security for the deposits.

4. The authority shall submit to the governor, the attorney general, the auditor of state, the department of management, and the legislative services agency, within thirty days of its receipt, a copy of the report of every external examination of the books and accounts of the authority, other than copies of the reports of examinations of the auditor of state.

5. 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 settlement trust fund which are moneys of the state.

2000 Acts, ch 1208, §13, 25; 2001 Acts, ch 164, §17, 21; 2003 Acts, ch 35, §45, 49

### **12E.14 Exemption from competitive bid laws.**

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 and hearings in connection with contracts, except as provided in [section 12.30](#).

2000 Acts, ch 1208, §14, 25

### **12E.15 Annual report.**

1. The authority shall submit to the governor, the general assembly, and the attorney general, on or before December 31, annually, a report including information regarding all of the following:

a. Its operations and accomplishments.

- b. Its receipts and expenditures during the previous fiscal year, in accordance with classifications it establishes for its operating and capital accounts.
  - c. Its assets and liabilities at the end of the previous fiscal year and the status of reserve, special, and other funds.
  - d. A schedule of its bonds outstanding at the end of the previous fiscal year, and a statement of the amounts redeemed and issued during the previous fiscal year.
  - e. A statement of its proposed and projected activities.
  - f. Recommendations to the governor and the general assembly, as deemed necessary.
  - g. Any other information deemed necessary.
2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress, during the reporting period, in attaining these goals.

2000 Acts, ch 1208, §15, 25

Referred to in [§12E.12](#)

#### **12E.16 Bankruptcy.**

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 under chapter nine of the federal bankruptcy code, 11 U.S.C. § 901 et seq., 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 nine 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 [this chapter](#). Any such contractual obligation shall not subsequently be modified by state law, during the period of the contractual obligation.

2000 Acts, ch 1208, §16, 25; 2005 Acts, ch 3, §11

#### **12E.17 Dissolution of the authority.**

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 [this chapter](#). Upon dissolution of the authority, all assets of the authority shall be returned to the state and shall be deposited in the general fund of the state, unless otherwise directed by the general assembly, 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.

2000 Acts, ch 1208, §17, 25; 2001 Acts, ch 164, §18, 21; 2008 Acts, ch 1186, §17, 19

#### **12E.18 Liberal interpretation.**

[This chapter](#), being deemed necessary for the welfare of the state and its people, shall be liberally construed to effect its purpose.

2000 Acts, ch 1208, §18, 25