

FILED APR 19 1900

SENATE FILE
BY IVERSON

2461

(COMPANION TO LSB 7326YH
BY RANTS)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating a tobacco settlement authority Act, authorizing
2 the issuance of bonds, and providing an effective date.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2461
JUDICIARY

1 Section 1. NEW SECTION. 12E.1 TITLE.

2 This chapter shall be known and may be cited as the
3 "Tobacco Settlement Authority Act".

4 Sec. 2. NEW SECTION. 12E.2 FINDINGS.

5 The general assembly finds all of the following:

6 1. Certain leading United States tobacco product
7 manufacturers have entered into the master settlement
8 agreement with various states and commonwealths of the United
9 States, including this state, obligating the manufacturers, in
10 return for a release of past, present, and certain future
11 claims against them as described in the agreement, to pay
12 substantial sums to the state, subject to future adjustments.

13 2. Due to the uncertainties related to any future
14 adjustments in the sums to be paid under the master settlement
15 agreement, it is in the best interest of the state to
16 establish a plan which provides for conversion of all or a
17 portion of the future payments into current funds, which, in
18 turn, would be invested to provide a stable and secure source
19 of future revenue. This plan would include, but would not be
20 limited to, provisions to allow for the selling or pledging of
21 all or a portion of the state's share to the authority created
22 under this chapter to issue bonds to provide for future
23 revenues. Any bonds issued would be payable solely from and
24 secured solely by the sums received under the master
25 settlement agreement and other funds pledged by the authority.
26 The bonds would not, in any event, constitute a claim against
27 the full faith and credit or taxing powers of the state.

28 3. In order to provide for the receipt of payments under
29 the master settlement agreement, to provide for issuance of
30 bonds, and to provide that the bonds and the administration of
31 the bonds be separate from the general credit of the state, it
32 is in the best interest of the state to create a separate and
33 distinct state instrumentality to which all or a portion of
34 the amounts received under the master settlement agreement may
35 be transferred and to grant this instrumentality the necessary

1 powers and duties prescribed in this chapter.

2 4. The establishment of a tobacco settlement authority is
3 for the benefit of the people of the state in that such action
4 will better secure a future source of revenues to meet the
5 needs and goals of the state and to avoid obligations by the
6 state.

7 5. The tobacco settlement authority will perform an
8 essential government function in carrying out its powers and
9 duties under this chapter.

10 6. All of the findings stated in this section are
11 legislative goals and public purposes and uses for which
12 public moneys, as identified in this chapter, may be borrowed,
13 expended, advanced, loaned, or granted.

14 Sec. 3. NEW SECTION. 12E.3 DEFINITIONS.

15 As used in this chapter, unless the context otherwise
16 requires:

17 1. "Authority" means the tobacco settlement authority
18 created in this chapter.

19 2. "Board" means the governing board of the authority.

20 3. "Bonds" means bonds, notes, and other obligations and
21 financing arrangements issued or entered into by the authority
22 pursuant to this chapter.

23 4. "Financial institution" means a bank or credit union as
24 defined in section 12C.1.

25 5. "Master settlement agreement" means the master
26 settlement agreement as defined in section 453C.1.

27 6. "Notes" means notes, warrants, loan agreements, and all
28 other forms of evidence of indebtedness authorized under this
29 chapter.

30 7. "Program plan" means the tobacco settlement program
31 plan established in this chapter to provide for the
32 implementation of the findings and purposes of this chapter.

33 8. "Qualified investments" means investments of the
34 authority authorized by this chapter.

35 9. "Sales agreement" means any agreement authorized

1 pursuant to this chapter in which the state provides for the
2 sale of all or a portion of the state's share to the
3 authority.

4 10. "State's share" means all of the state's monetary
5 rights and interests, all rights of enforcement, and all
6 rights necessary and convenient for enforcement of those
7 monetary rights and interests in the master settlement
8 agreement.

9 11. "Tobacco settlement endowment fund" means the tobacco
10 settlement endowment fund created in section 12.65.

11 12. "Tobacco settlement trust fund" means the tobacco
12 settlement trust fund created in this chapter.

13 Sec. 4. NEW SECTION. 12E.4 TOBACCO SETTLEMENT AUTHORITY
14 -- CREATED -- PURPOSES -- POWERS -- RESTRICTIONS.

15 1. A tobacco settlement authority is created and
16 constitutes a public instrumentality and agency of the state,
17 separate and distinct from the state, exercising public and
18 essential governmental functions.

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

21 a. To implement and administer the program plan and to
22 establish a stable source of revenue to be used for the
23 purposes designated in section 12.65.

24 b. To enter into sales agreements.

25 c. To issue bonds and enter into funding options,
26 consistent with this chapter, including refunding and
27 refinancing its debt and obligations.

28 d. To sell, pledge, or assign, as security, all or a
29 portion of the state's share, to provide for and secure the
30 issuance of its bonds.

31 e. To invest funds available under this chapter to provide
32 for a source of revenue in accordance with the program plan.

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

1 g. To refund and refinance the authority's debts and
2 obligations, and to manage its funds, obligations, and
3 investments as necessary and if consistent with its purpose.

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

7 i. To implement the purposes of this chapter as stated in
8 the findings of the general assembly in section 12E.2.

9 3. The authority shall invest its funds and accounts in
10 accordance with this chapter and shall not take action or
11 invest in any manner that would cause the state to become a
12 stockholder in any corporation or that would cause the state
13 to assume or agree to pay the debt or liability of any
14 corporation in violation of the United States Constitution or
15 the Constitution of the State of Iowa.

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

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

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

26 Sec. 5. NEW SECTION. 12E.5 POWERS NOT RESTRICTED -- LAW
27 COMPLETE IN ITSELF.

28 This chapter shall not restrict or limit the powers which
29 the authority has under any other law of this state, but is
30 cumulative as to any such powers. A proceeding, notice, or
31 approval is not required for the creation of the authority or
32 the issuance of obligations or an instrument as security,
33 except as provided in this chapter.

34 Sec. 6. NEW SECTION. 12E.6 GOVERNING BOARD.

35 1. The powers of the authority are vested in and shall be

1 exercised by a board consisting of the treasurer of state, the
2 auditor of state, and the director of the department of
3 management. Notwithstanding the provisions of section 12.30,
4 subsection 2, regarding ex officio nonvoting status, the
5 treasurer of state shall act as a voting member of the
6 authority.

7 2. Two members of the board constitute a quorum.

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

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

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

16 Sec. 7. NEW SECTION. 12E.7 STAFF -- ASSISTANCE BY STATE
17 OFFICERS, AGENCIES, AND DEPARTMENTS.

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

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

24 Sec. 8. NEW SECTION. 12E.8 LIMITATION OF LIABILITY.

25 Members of the board and persons acting in the authority's
26 behalf, while acting within the scope of their employment or
27 agency, are not subject to personal liability resulting from
28 carrying out the powers and duties conferred on them under
29 this chapter.

30 Sec. 9. NEW SECTION. 12E.9 GENERAL POWERS.

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

35 a. The power to issue its bonds and to enter into other

1 funding options as provided in this chapter.

2 b. The power to have perpetual succession as a public
3 instrumentality and agency of the state, until dissolved in
4 accordance with this chapter.

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

6 d. The power to make and execute agreements, contracts,
7 and other instruments, with any public or private person, in
8 accordance with this chapter.

9 e. The power to hire and compensate legal counsel,
10 notwithstanding chapter 13.

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

13 g. The power to invest or deposit moneys of the authority
14 in any manner determined by the authority, notwithstanding
15 chapter 12B or 12C.

16 h. The power to procure insurance, other credit
17 enhancements, and other financing arrangements to fulfill its
18 purposes under this chapter, including but not limited to
19 municipal bond insurance and letters of credit.

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

22 j. The power to adopt rules, consistent with this chapter
23 and in accordance with chapter 17A, as the board determines
24 necessary.

25 2. The authority is exempt from the requirements of
26 chapter 18.

27 Sec. 10. NEW SECTION. 12E.10 AUTHORIZATON OF THE SALE OF
28 RIGHTS IN THE MASTER SETTLEMENT AGREEMENT.

29 1. Subject to the program plan, and following its review
30 by the legislative council and certification by the executive
31 council pursuant to section 12E.11, the governor shall sell
32 and assign all or a portion of the state's share to the
33 authority. The attorney general shall assist the governor in
34 the preparation and review of all necessary documentation to
35 effect such a sale by the date specified in the program plan.

1 The terms and conditions of the sale shall be established in
2 the program plan in order to accomplish the purpose and intent
3 of this chapter.

4 2. The sale made under this section shall be irrevocable
5 during the time when bonds are outstanding under this chapter,
6 and shall be a part of the contractual obligation owed to the
7 bondholders. The sale shall constitute and be treated as a
8 true sale and absolute transfer of the property so transferred
9 and not as a pledge or other security interest for any
10 borrowing. The characterization of such a sale as an absolute
11 transfer shall not be negated or adversely affected by the
12 fact that only a portion of the state's share is being sold,
13 or by the state's acquisition or retention of an ownership
14 interest in the residual assets.

15 3. On or after the effective date of such sale, the state
16 shall not have any right, title, or interest in the portion of
17 the master settlement agreement sold and such portion shall be
18 the property of the authority and not the state, and shall be
19 owned, received, held, and disbursed by the authority or its
20 trustee or assignee, and not the state.

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

26 5. The authority, the treasurer of state, and the attorney
27 general shall report to the legislative council and the
28 executive council on or before the date specified in the
29 program plan, advising them of the accomplishment of the sale,
30 its terms and conditions.

31 Sec. 11. NEW SECTION. 12E.11 TOBACCO SETTLEMENT PROGRAM
32 PLAN.

33 1. The authority shall establish a tobacco settlement
34 program plan, in accordance with this chapter, to provide the
35 state with a secure and stable source of revenue for purposes

1 designated by section 12.65. The authority shall submit a
2 report of the proposed program plan to the legislative council
3 and the executive council. Following review by the
4 legislative council, if the legislative council determines
5 that the plan is satisfactory, the legislative council shall
6 inform the executive council of its determination. In making
7 the determination regarding whether the plan is satisfactory,
8 the legislative council shall determine if the plan
9 satisfactorily fulfills the purposes of this chapter and
10 provides prudent measures that reasonably secure an
11 appropriate investment return to the state. If the executive
12 council agrees with the determination, the executive council
13 shall certify its determination to the authority. Following
14 such certification by the executive council, the authority may
15 implement the program plan and may proceed to enter into any
16 sales agreement between the state and the authority, and may
17 take any other necessary action in accordance with the program
18 plan and this chapter.

19 2. The program plan shall include but is not limited to
20 inclusion of all of the following:

21 a. The structure of any sales agreement between the state
22 and the authority.

23 b. The terms of payment of amounts due from the authority
24 to the state.

25 c. The investment criteria of funds of the authority
26 including those held for payment to the state in accordance
27 with this chapter.

28 d. An analysis of alternative funding options, with or
29 without the use of the authority and issuance of bonds.

30 e. Recommendations to the governor and the general
31 assembly regarding any necessary changes in existing law
32 relating to this chapter.

33 f. A date by which any sale from the state to the
34 authority of all or a portion of the state's share should be
35 consummated, the specified period during which the state shall

1 be paid, and the date by which the bonds or alternative
2 funding options should be concluded.

3 g. Any other terms or provisions necessary to implement
4 this chapter.

5 3. This chapter shall not be interpreted to authorize the
6 state, the governor, or the authority to enter into any sales
7 agreement or to issue bonds or implement a program plan prior
8 to review by the legislative council and certification by the
9 executive council.

10 Sec. 12. NEW SECTION. 12E.12 AUTHORITY -- BONDS.

11 1. The authority may issue bonds and use the proceeds from
12 the bonds for the purpose of providing a secure and stable
13 source of funding to the state, consistent with the purposes
14 of this chapter. Bonds issued pursuant to this section may be
15 secured by a pledge of all or a portion of the state's share
16 and any moneys derived from the state's share, and any other
17 sources available to the authority with the exception of
18 moneys in the tobacco settlement trust fund. The authority
19 may also issue refunding bonds, including advance refunding
20 bonds, for the purpose of refunding previously issued bonds,
21 and may issue other types of bonds, debt obligations, and
22 financing arrangements necessary to fulfill its purposes or
23 the purposes of this chapter.

24 2. The authority may issue its bonds in principal amounts
25 which, in the opinion of the authority, are necessary to
26 provide sufficient funds for achievement of its purposes, the
27 payment of interest on its bonds, the establishment of
28 reserves to secure the bonds, the costs of issuance of its
29 bonds, and all other expenditures of the authority incident to
30 and necessary to carry out its purposes or powers. The bonds
31 are investment securities and negotiable instruments within
32 the meaning of and for the purposes of the uniform commercial
33 code.

34 3. Bonds issued by the authority are payable solely and
35 only out of the moneys, assets, or revenues pledged by the

1 authority and are not a general obligation or indebtedness of
2 the authority or an obligation or indebtedness of the state or
3 any subdivision of the state. The authority shall not pledge
4 the credit or taxing power of the state or any political
5 subdivision of the state, or create a debt or obligation of
6 the state, or make its debts payable out of any moneys except
7 those of the authority, excluding those moneys deposited in
8 the tobacco settlement trust fund.

9 4. Bonds shall state on their face that they are payable
10 both as to principal and interest solely out of the assets of
11 the authority pledged for their purpose and do not constitute
12 an indebtedness of the state or any political subdivision of
13 the state, are secured solely by and payable solely from
14 receipts under the master settlement agreement, constitute
15 neither a general, legal, or moral obligation of the state or
16 any of its political subdivisions, and that the state has no
17 obligation or intention to satisfy any deficiency or default
18 of any payment of the bonds.

19 5. Any amount pledged by the authority to be received
20 under the master settlement agreement shall be valid and
21 binding at the time the pledge is made. Receipts so pledged
22 and then or thereafter received by the authority shall
23 immediately be subject to the lien of such pledge without any
24 physical delivery thereof or further act. The lien of any
25 such pledge shall be valid and binding as against all parties
26 having claims of any kind against the authority, whether such
27 parties have notice of the lien. Notwithstanding any other
28 provision to the contrary, the resolution of the authority or
29 any other instrument by which a pledge is created need not be
30 recorded or filed to perfect such pledge.

31 6. The proceeds of bonds issued by the authority and not
32 required for deposit in the tobacco settlement trust fund may
33 be invested in any manner approved by the board and specified
34 in the trust indenture or resolution pursuant to which the
35 bonds must be issued, notwithstanding any other provision to

1 the contrary.

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

3 a. The bonds shall be in a form, issued in denominations,
4 executed in a manner, and payable over terms and with rights
5 of redemption, as the board prescribes in the resolution
6 authorizing their issuance.

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

12 c. The bonds shall be subject to the terms, conditions,
13 and covenants providing for the payment of the principal,
14 redemption premiums, if any, interest, and other terms,
15 conditions, covenants, and protective provisions safeguarding
16 payment, not inconsistent with this chapter and as determined
17 by resolution of the board authorizing their issuance.

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

27 9. Bonds must be authorized by a resolution of the board.
28 However, a resolution authorizing the issuance of bonds may
29 delegate to an officer of the authority the power to negotiate
30 and fix the details of an issue of bonds by an appropriate
31 certificate of the authorized officer.

32 10. To comply with federal law with respect to the
33 issuance of bonds, the interest of which is tax-exempt
34 pursuant to the Internal Revenue Code, the authority may issue
35 a certain series of bonds, or periodically issue several

1 series of bonds, so that interest on the bonds remains exempt
2 from federal taxation or to comply with the purposes specified
3 in this chapter.

4 Sec. 13. NEW SECTION. 12E.13 TOBACCO SETTLEMENT TRUST
5 FUND -- ESTABLISHED -- INVESTMENT -- LIABILITY.

6 1. A tobacco settlement trust fund is established,
7 separate and apart from all other public moneys or funds of
8 the state, under the control of the authority. The fund shall
9 consist of moneys paid to the authority and not pledged to the
10 payment of bonds or otherwise obligated. Such moneys shall
11 include but are not limited to payments received from the
12 master settlement agreement which are not pledged to the
13 payment of bonds or which are subsequently released from a
14 pledge to the payment of any bonds; payments which, in
15 accordance with any sales agreement with the state, are to be
16 paid to the state and not pledged to the bonds, including that
17 portion of the proceeds of any bonds designated for purchase
18 of all or a portion of the state's share, which are designated
19 for deposit in the fund, together with all interest,
20 dividends, and rents on the bonds; and all securities or
21 investment income and other assets acquired by and through the
22 use of the moneys belonging to the fund and any other moneys
23 deposited in the fund. Moneys in the fund are to be used
24 solely and only for the payment of all amounts due and to
25 become due to the state, and shall not be used for any other
26 purpose. Such moneys shall not be available for the payment
27 of any claim against the authority or subject to any debt or
28 obligation of the authority.

29 2. The treasurer of the authority shall act as custodian
30 and trustee of the fund and shall administer the fund as
31 directed by the authority. The treasurer of the authority
32 shall do all of the following:

33 a. Hold the funds.

34 b. Invest the portion of the funds which, as deemed by the
35 authority, is not necessary for current payment of sums to the

1 state under this chapter or the program plan.

2 c. Disburse funds, if directed by the authority.

3 d. Sell any securities or other property held by the fund
4 and reinvest the proceeds as directed by the authority, when
5 deemed advisable by the authority for the protection of the
6 fund or the preservation of the value of the investment. Such
7 sale of securities or other property held by the fund shall
8 only be made with the advice of the board in the manner and to
9 the extent provided in this chapter with regard to the
10 purchase of investments.

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

16 f. Pay for securities, as directed by the authority, on
17 the receipt of the purchasing financial institution's paid
18 statement or paid confirmation of purchase.

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

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

31 b. Within the limitations of the standard prescribed in
32 this subsection and the program plan, the treasurer of the
33 authority, the authority, and the board may acquire and retain
34 any type of property or investment which persons of prudence,
35 discretion, and intelligence would acquire or retain for their

1 own financial interests.

2 c. The authority and the board shall give appropriate
3 consideration to those facts and circumstances that the
4 authority and board know or should know are relevant to the
5 particular investment or investment policy involved, including
6 the role the investment plays in the total value of the fund.
7 For the purposes of this paragraph, appropriate consideration
8 includes, but is not limited to, a determination by the
9 authority and the board that the particular investment or
10 investment policy is reasonably designed to further the
11 purposes of the tobacco settlement program plan, taking into
12 consideration the risk of loss and the opportunity for gain or
13 other return associated with the investment or investment
14 policy and consideration of all of the following as they
15 relate to the tobacco settlement trust fund:

16 (1) The composition of the fund with regard to
17 diversification.

18 (2) The liquidity and current return of the investments in
19 the fund relative to the anticipated cash flow requirements of
20 the program plan.

21 (3) The projected return of the investments relative to
22 the funding objectives of the program plan.

23 d. Investments of moneys in the funds are not subject to
24 sections 73.15 through 73.21.

25 4. The authority, its staff, members of the board, and the
26 treasurer of the authority are not personally liable for
27 actions or omissions under this chapter that do not involve
28 malicious or wanton misconduct even if those actions or
29 omissions violate the standards established in this section.

30 5. Except as provided in this section, if there is loss to
31 the fund, the treasurer, the authority, the board, and the
32 staff are not personally liable, and the loss shall be charged
33 against the fund. The amount required to cover a loss may be
34 paid from the fund.

35 6. a. Expenses incurred in the sale and purchase of

1 securities belonging to the fund shall be charged to the fund,
2 and the amount required for the investment management expenses
3 may be paid from the fund, subject to the limitations stated
4 in this subsection. The amount paid for investment management
5 expenses for a fiscal year under this section shall not exceed
6 the reasonable and customary charge to similar funds for
7 similar purposes. The authority shall report the investment
8 management expenses for a fiscal year as a percent of the
9 market value of the fund in the annual report to the governor
10 submitted pursuant to section 12E.16.

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

16 7. All moneys paid to or deposited in the fund are
17 available to the authority to be used for the exclusive
18 purpose of the program plan in accordance with this chapter,
19 including but not limited to all of the following:

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

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

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

27 Sec. 14. NEW SECTION. 12E.14 MONEYS OF THE AUTHORITY.

28 1. Moneys of the authority, except as otherwise provided
29 in this chapter or specified in a trust indenture or
30 resolution pursuant to which the bonds are issued, shall be
31 paid to the authority and shall be deposited in a financial
32 institution designated by the authority. The moneys shall be
33 withdrawn on the order of the authority or its designee.
34 Deposits shall be secured in the manner determined by the
35 authority.

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

8 3. The authority may contract with the holders of its
9 bonds relating to the custody, collection, security,
10 investment, and payment of moneys of the authority, and
11 relating to the moneys held in trust or otherwise for payment
12 of bonds, with the exception of moneys in the tobacco
13 settlement trust fund. Moneys held in trust or otherwise for
14 the payment of bonds or in any way to secure bonds and
15 deposits of the moneys may be secured in the same manner as
16 moneys of the authority, and financial institutions, trust
17 companies, and other financial institutions may provide
18 security for the deposits.

19 4. The authority shall submit to the governor, the
20 attorney general, the auditor of state, the department of
21 management, and the legislative fiscal bureau, within thirty
22 days of its receipt, a copy of the report of every external
23 examination of the books and accounts of the authority, other
24 than copies of the reports of examinations of the auditor of
25 state.

26 5. All moneys of the authority or moneys held by the
27 authority shall be invested and held in the name of the
28 authority, whether they are held for the benefit, security, or
29 future payment to holders of bonds or to the state. All such
30 moneys and investments shall be considered moneys and
31 investments of the authority.

32 Sec. 15. NEW SECTION. 12E.15 EXEMPTION FROM COMPETITIVE
33 BID LAWS.

34 The authority and contracts entered into by the authority
35 in carrying out its public and essential governmental

1 functions are exempt from the laws of the state which provide
2 for competitive bids and hearings in connection with
3 contracts, except as provided in section 12.30.

4 Sec. 16. NEW SECTION. 12E.16 ANNUAL REPORT.

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

- 9 a. Its operations and accomplishments.
10 b. Its receipts and expenditures during the previous
11 fiscal year, in accordance with classifications it establishes
12 for its operating and capital accounts.
13 c. Its assets and liabilities at the end of the previous
14 fiscal year and the status of reserve, special, and other
15 funds.
16 d. A schedule of its bonds outstanding at the end of the
17 previous fiscal year, and a statement of the amounts redeemed
18 and issued during the previous fiscal year.
19 e. A statement of its proposed and projected activities.
20 f. Recommendations to the governor and the general
21 assembly, as deemed necessary.
22 g. Any other information deemed necessary.

23 2. The annual report shall identify performance goals of
24 the authority, and clearly indicate the extent of progress,
25 during the reporting period, in attaining these goals.

26 Sec. 17. NEW SECTION. 12E.17 BANKRUPTCY.

27 Prior to the date which is three hundred sixty-six days
28 after which the authority no longer has any bonds outstanding,
29 the authority is prohibited from filing a voluntary petition
30 under chapter 9 of the federal bankruptcy code or such
31 corresponding charter or section as may, from time to time, be
32 in effect, and a public official or organization, entity, or
33 other person shall not authorize the authority to be or become
34 a debtor under chapter 9 or any successor or corresponding
35 chapter or sections during such periods. The provisions of

1 this section shall be part of any contractual obligation owed
2 to the holders of bonds issued under this chapter. Any such
3 contractual obligation shall not subsequently be modified by
4 state law, during the period of the contractual obligation.

5 Sec. 18. NEW SECTION. 12E.18 DISSOLUTION OF THE
6 AUTHORITY.

7 The authority shall dissolve no later than two years from
8 the date of final payment of all outstanding bonds and the
9 satisfaction of all outstanding obligations of the authority,
10 except to the extent necessary to remain in existence to
11 fulfill any outstanding covenants or provisions with
12 bondholders or third parties made in accordance with this
13 chapter. Upon dissolution of the authority, all assets of the
14 authority shall be returned to the state and shall be
15 deposited in the tobacco settlement endowment fund, unless
16 otherwise directed by the general assembly, and the authority
17 shall execute any necessary assignments or instruments,
18 including any assignment of any right, title, or ownership to
19 the state for receipt of payments under the master settlement
20 agreement.

21 Sec. 19. NEW SECTION. 12E.19 LIBERAL INTERPRETATION.

22 This chapter, being deemed necessary for the welfare of the
23 state and its people, shall be liberally construed to effect
24 its purpose.

25 Sec. 20. Section 12.30, subsection 1, paragraph a, Code
26 1999, is amended to read as follows:

27 a. "Authority" means a department, or public or quasi-
28 public instrumentality of the state including, but not limited
29 to, the authority created under chapter 12E, 16, 16A, 175,
30 257C, 261A, or 327I, which has the power to issue obligations,
31 except that "authority" does not include the state board of
32 regents or the Iowa finance authority to the extent it acts
33 pursuant to chapter 260C.

34 Sec. 21. Section 12.65, Code 1999, is amended by striking
35 the section and inserting in lieu thereof the following:

1 12.65 TOBACCO SETTLEMENT ENDOWMENT FUND.

2 1. A tobacco settlement endowment fund is created in the
3 office of the treasurer of state. After payment of litigation
4 costs, all moneys paid to the state by the tobacco settlement
5 authority pursuant to chapter 12E shall be deposited in the
6 fund. Additionally, the state share of the moneys paid
7 pursuant to the master settlement agreement, as defined in
8 section 453C.1, which are not sold to the tobacco settlement
9 authority pursuant to chapter 12E shall be deposited in the
10 fund.

11 2. Moneys deposited in the fund shall be used only in
12 accordance with appropriations from the fund for purposes
13 related to health care, substance abuse treatment and
14 enforcement, tobacco use prevention and control, and other
15 purposes related to the needs of children, adults, and
16 families in the state.

17 3. A savings account for healthy Iowans is created within
18 the tobacco settlement endowment fund. Moneys, appropriated
19 annually, shall be deposited in the account and shall be
20 invested to provide an ongoing source of investment earnings.

21 4. Notwithstanding section 8.33, any unexpended balance in
22 the fund at the end of the fiscal year shall be retained in
23 the fund. Notwithstanding section 12C.7, subsection 2,
24 interest or earnings on investments or time deposits of the
25 moneys in the tobacco settlement endowment fund, in the
26 savings account for healthy Iowans, and in any other account
27 established within the fund shall be credited to the tobacco
28 settlement endowment fund, to the savings account for healthy
29 Iowans, or to any other account established, respectively.

30 5. For the purposes of this section, "litigation costs"
31 are those costs itemized by the attorney general and submitted
32 to and approved by the attorney general.

33 Sec. 22. Section 12B.10, subsection 6, Code 1999, is
34 amended by adding the following new paragraph:

35 NEW PARAGRAPH. i. Investments by the tobacco settlement

1 authority governed by chapter 12E.

2 Sec. 23. Section 12B.10A, subsection 6, Code 1999, is
3 amended by adding the following new paragraph:

4 NEW PARAGRAPH. i. The tobacco settlement authority
5 governed by chapter 12E.

6 Sec. 24. Section 12B.10B, subsection 3, Code 1999, is
7 amended by adding the following new paragraph:

8 NEW PARAGRAPH. i. The tobacco settlement authority
9 governed by chapter 12E.

10 Sec. 25. Section 12B.10C, Code 1999, is amended by adding
11 the following new subsection:

12 NEW SUBSECTION. 8. The tobacco settlement authority
13 governed by chapter 12E.

14 Sec. 26. EFFECTIVE DATE. This Act, being deemed of
15 immediate importance, takes effect upon enactment.

16 EXPLANATION

17 This bill establishes a new Code chapter 12E, the tobacco
18 settlement authority Act.

19 Code section 12E.1 provides the title of the chapter, the
20 "Tobacco Settlement Authority Act".

21 Code section 12E.2 provides findings relating to the
22 development of a plan to provide options for investment of the
23 state's share of the tobacco settlement agreement. The
24 findings are legislative goals and public purposes and uses
25 for which public moneys, as identified in the chapter, may be
26 borrowed, expended, advanced, loaned, or granted.

27 Code section 12E.3 provides definitions used in the
28 chapter.

29 Code section 12E.4 creates the tobacco settlement
30 authority, and provides the purposes, powers, and restrictions
31 of the authority.

32 Code section 12E.5 provides that the chapter does not
33 restrict or limit the powers of the authority otherwise
34 provided by law but that the chapter is cumulative as to such
35 powers.

1 Code section 12E.6 establishes the governing board of the
2 authority which consists of the treasurer of state, the
3 auditor of state, and the director of the department of
4 management.

5 Code section 12E.7 provides that the staff of the office of
6 the treasurer of state is also the staff of the authority, and
7 provides that other state officers, agencies, and departments
8 may provide services within their respective functions, as
9 requested by the authority.

10 Code section 12E.8 provides for limitation of personal
11 liability for members of the board and persons acting in the
12 authority's behalf and in the scope of their employment or
13 agency.

14 Code section 12E.9 provides the general powers of the
15 authority, including the power to issue its bonds and to enter
16 into other funding options.

17 Code section 12E.10 authorizes the sale of the state's
18 share of the master settlement agreement, entered into by the
19 state with the tobacco companies, to the authority, pursuant
20 to a program plan. Prior to any such sale, the program plan
21 is to be developed, reviewed by the legislative council, and
22 certified by the executive council. If the plan is reviewed
23 and certified, the sale may take place. The terms and
24 conditions of any sale are to be included in the program plan.

25 Code section 12E.11 provides criteria for the program plan.
26 The program plan is a means by which alternatives relating to
27 investment of the state's share are reviewed and recommended
28 for further action. The program plan is to include the
29 structure of any sales agreement between the state and the
30 authority; the terms of payment of amounts due the state by
31 the authority; the investment criteria of funds of the
32 authority; an analysis of funding options with or without the
33 use of the authority and the issuance of bonds;
34 recommendations for changes in the law relating to the
35 chapter; a date certain for the sale of the state's share to

1 the authority; the period during which the state should be
2 paid, and the date by which the bonds or alternative funding
3 options should be concluded; and any other terms or provisions
4 necessary to implement the chapter.

5 Code section 12E.12 authorizes the authority to issue bonds
6 to provide a secure and stable source of funding to the state,
7 consistent with the purposes of the chapter.

8 Code section 12E.13 establishes a tobacco settlement trust
9 fund, separate and apart from all other public moneys or funds
10 of the state, under the control of the authority. The fund is
11 to consist of moneys paid to the authority and not pledged to
12 the payment of bonds or otherwise obligated. The bill
13 provides duties of the treasurer of the authority relating to
14 the fund; provides that the authority is to execute the
15 disposition and investment of moneys in the fund in accordance
16 with the investment policy and goal statement established by
17 the board, and provides the standard to be used in developing
18 the policy and goal statement; provides limitation of personal
19 liability of the authority, its staff members of the board and
20 the treasurer of the authority relating to the fund; provides
21 for payment of expenses relating to the fund; and provides the
22 purposes for which moneys in the fund may be expended.

23 Code section 12E.14 establishes provisions relating to the
24 moneys of the authority, including providing for examination
25 of the accounts and books of the authority.

26 Code section 12E.15 provides that the authority is not
27 subject to competitive bid laws and hearings, except as
28 provided in section 12.30 which establishes provisions
29 relating specifically to authorities established by law.

30 Code section 12E.16 provides for the submission of an
31 annual report to the governor, the general assembly, and the
32 attorney general relating to the chapter.

33 Code section 12E.17 provides limitations on the authority
34 in filing for bankruptcy.

35 Code section 12E.18 provides for dissolution of the

1 authority no later than two years from the date of final
2 payment of all outstanding bonds and the satisfaction of all
3 outstanding obligations of the authority, with exceptions.

4 Code section 12E.19 provides for the liberal interpretation
5 of the chapter to effect its purpose.

6 The remainder of the bill makes conforming changes,
7 including changes to the existing tobacco settlement fund, by
8 changing the name of that fund to the tobacco settlement
9 endowment fund and providing for use of the moneys in that
10 fund.

11 The bill takes effect upon enactment.

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