
HOUSE BILL No. 1002

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-4-31; IC 4-12-1-14.3; IC 8-9.5-9.

Synopsis: Securitization of tobacco settlement funds. Establishes the tobacco settlement authority and provides for the sale of bonds payable from future tobacco settlement payments to the state. Makes related changes in the statute governing distributions from the tobacco master settlement agreement fund. Appropriates money from the tobacco master settlement agreement fund to the tobacco settlement authority.

Effective: July 1, 2003.

Brown C, Murphy

January 15, 2003, read first time and referred to Committee on Public Health.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

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HOUSE BILL No. 1002



A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-4-31 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]:

4 **Chapter 31. Tobacco Settlement Authority**

5 **Sec. 1. As used in this chapter, "authority" refers to the tobacco**
6 **settlement authority created in this chapter.**

7 **Sec. 2. As used in this chapter, "board" refers to the governing**
8 **board of the authority.**

9 **Sec. 3. As used in this chapter, "bonds" means bonds, notes, and**
10 **any other obligations and financing arrangements issued or**
11 **entered into by the authority under this chapter, and any such**
12 **bonds, notes, obligations, or other financing arrangements entered**
13 **into to refund the foregoing, whether on a current or an advance**
14 **basis.**

15 **Sec. 4. As used in this chapter, "financing costs" means**
16 **capitalized interest, capitalized operating expenses, debt service**
17 **reserves, operating reserves, and any cost of issuance, credit**



1 enhancement, swap agreement under IC 8-9.5-9, or item of expense
2 directly or indirectly payable or reimbursable by the authority and
3 related to the authorization, sale, or issuance of the bonds,
4 including, but not limited to, underwriting fees and fees and
5 expenses for professional consultants and fiduciaries.

6 Sec. 5. As used in this chapter, "master settlement agreement"
7 has the meaning set forth in IC 24-3-3-6.

8 Sec. 6. As used in this chapter, "net proceeds" means the
9 amount of proceeds remaining following each sale of bonds that is
10 not required by the authority to pay the financing costs.

11 Sec. 7. As used in this chapter, "qualifying statute" has the
12 meaning set forth in the master settlement agreement. For
13 purposes of this chapter, IC 24-3-3 is the qualifying statute.

14 Sec. 8. As used in this chapter, "residual interests" means the
15 income of the authority that is in excess of the authority's
16 requirements for its reserve fund or to pay its operating expenses,
17 debt service, whether at maturity or upon redemption, or any
18 other contractual obligations under any resolution or that may be
19 incurred in connection with the issuance of the bonds.

20 Sec. 9. As used in this chapter, "sales agreement" means any
21 agreement authorized under this chapter in which the state sells to
22 the authority a portion of the amounts and revenues required to be
23 paid by tobacco product manufacturers to the state and the state's
24 rights to receive the amounts and revenues under the master
25 settlement agreement.

26 Sec. 10. As used in this chapter, "state" means the state of
27 Indiana, acting by and through its budget agency, or any other
28 state agency, state office, or state officer required by law or
29 contract to act on behalf of the state of Indiana for a particular
30 purpose.

31 Sec. 11. (a) The general assembly declares it to be the public
32 policy of the state and a recognized governmental function to assist
33 in securitizing the revenue stream from the master settlement
34 agreement between the state and tobacco product manufacturers
35 in order to provide a current and reliable source of revenue for the
36 state. The purpose of this chapter is to establish a tobacco
37 settlement authority having the power to purchase certain rights
38 of the state under the master settlement agreement and to issue
39 nonrecourse revenue bonds.

40 (b) This chapter, being necessary for the welfare of the state and
41 its inhabitants, shall be liberally construed to effect the purposes
42 thereof.

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1 (c) The general assembly hereby finds that the following
 2 activities are necessary and proper and serve a public purpose or
 3 purposes through the promotion of economic development,
 4 education, health and general welfare, and will be of benefit to the
 5 health and general welfare of the state and its citizens:

- 6 (1) The creation of the authority.
 7 (2) Entering into one (1) or more sales agreements.
 8 (3) The sale to the authority of a portion of the amounts and
 9 revenues required to be paid by tobacco product
 10 manufacturers to the state and the state's right to receive the
 11 amounts and revenues under the master settlement
 12 agreement.
 13 (4) The issuance of bonds.

14 **Sec. 12.** The tobacco settlement authority is established, and is
 15 a public body corporate and politic, separate from the state, and
 16 not a state agency. The exercise by the authority of its powers
 17 constitutes an essential public and governmental function.

18 **Sec. 13. (a)** The powers of the authority are vested in and shall
 19 be exercised by a board consisting of the following seven (7)
 20 members:

- 21 (1) The governor, or the governor's designee, who serves as
 22 chairperson.
 23 (2) The lieutenant governor, or the lieutenant governor's
 24 designee, who serves as vice chairperson.
 25 (3) The treasurer of state, or the treasurer of state's designee.
 26 (4) Four (4) members appointed by the governor who are
 27 persons of known probity and who possess adequate capacity
 28 for the performance of the duties of members of the authority.
 29 Not more than two (2) of the members appointed under this
 30 subdivision may be members of the same political party.

31 (b) The board shall elect from among the board's members the
 32 other officers the board considers necessary or convenient.

33 (c) The term of the members of the board appointed by the
 34 governor shall be four (4) years from the date of their
 35 appointment, except that the terms of two (2) of the initial
 36 appointees, as determined by the governor, shall be for two (2)
 37 years from the date of their appointment.

38 (d) Each member of the board appointed by the governor:

- 39 (1) shall hold office for the term of the member's respective
 40 appointment;
 41 (2) shall continue to serve after the expiration of the
 42 appointment until a successor is appointed and qualified;

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1 **(3) is eligible for reappointment; and**

2 **(4) serves at the pleasure of the governor and may be removed**
 3 **from office by the governor at any time.**

4 **(e) The members of the board are not entitled to any**
 5 **compensation for their services but are entitled to reimbursement**
 6 **for actual and necessary expenses on the same basis as state**
 7 **employees.**

8 **Sec. 14. Four (4) members of the board constitute a quorum.**
 9 **Four (4) affirmative votes are required for the board to take**
 10 **action.**

11 **Sec. 15. Meetings of the board shall be held in accordance with**
 12 **IC 5-14-1.5 and at the call of the chair or when a majority of the**
 13 **members of the board so requests.**

14 **Sec. 16. (a) This section applies to a meeting of the board at**
 15 **which at least four (4) members of the board are physically present**
 16 **at the place where the meeting is conducted.**

17 **(b) A member of the board may participate in a meeting of the**
 18 **board by using a means of communication that permits:**

19 **(1) all other members of the board participating in the**
 20 **meeting; and**

21 **(2) all members of the public physically present at the place**
 22 **where the meeting is conducted;**

23 **to simultaneously communicate with each other during the**
 24 **meeting.**

25 **(c) A member of the board who participates in a meeting under**
 26 **subsection (b) is considered to be present at the meeting.**

27 **(d) The memoranda of the meeting prepared under**
 28 **IC 5-14-1.5-4 must also state the name of each member of the**
 29 **board who:**

30 **(1) was physically present at the place where the meeting was**
 31 **conducted;**

32 **(2) participated in the meeting by using a means of**
 33 **communication described in subsection (b); and**

34 **(3) was absent.**

35 **Sec. 17. Any member or employee of the authority who has, will**
 36 **have, or later acquires an interest, direct or indirect, in any**
 37 **transaction with the authority shall immediately disclose the**
 38 **nature and extent of the interest in writing to the authority as soon**
 39 **as the member or employee has knowledge of the actual or**
 40 **prospective interest. The disclosure shall be announced in open**
 41 **meeting and entered upon the minutes of the authority. Upon**
 42 **disclosure, the member or employee shall not participate in any**



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1 action by the authority authorizing the transaction. However, such
 2 an interest shall not invalidate actions by the authority with the
 3 participation of the disclosing member prior to the time when the
 4 member became aware of the interest.

5 **Sec. 18.** The authority may, without the approval of the attorney
 6 general or any other state officer, employ independent counsel,
 7 bond counsel, other attorneys, financial advisers, investment
 8 bankers, auditors, other technical or professional assistants, and
 9 such other officers, agents and employees (including an executive
 10 director), permanent or temporary, as the authority considers
 11 necessary or convenient to carry out the efficient operation of the
 12 authority, and shall determine the qualifications, duties,
 13 compensation, and terms of service of all such persons. The
 14 chairman may appoint the initial executive director. The executive
 15 director is the chief operating officer of the authority, and the
 16 board shall establish the executive director's duties and
 17 responsibilities, including the powers that the authority has under
 18 this section. The board may delegate to an officer of the authority,
 19 the executive director, or one (1) or more other employees or
 20 agents of the authority such duties and responsibilities as the board
 21 considers necessary or convenient, including the powers that the
 22 authority has set forth in this section. Employees of the authority
 23 shall not be considered employees of the state.

24 **Sec. 19. (a)** The authority shall:

25 (1) adopt:

26 (A) rules under IC 4-22-2; or

27 (B) a policy;

28 establishing a code of ethics for its employees; or

29 (2) decide it wishes to be under the jurisdiction and rules
 30 adopted by the state ethics commission.

31 (b) A code of ethics adopted by rule or policy under this section
 32 must be consistent with state law and approved by the governor.

33 **Sec. 20.** The authority has all the general powers necessary to
 34 carry out its purposes and duties and to exercise its specific
 35 powers. In addition to other powers specified in this chapter, the
 36 authority may:

37 (1) sue and be sued in the name of the authority;

38 (2) make and execute agreements, contracts, and other
 39 instruments, with any public or private person, in accordance
 40 with this chapter;

41 (3) invest monies held by the authority or on its behalf under
 42 any trust agreement of the authority or otherwise in the

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1 manner determined by resolution of the authority or under
 2 the trust agreement (an investment under this subdivision is
 3 not restricted by or subject to any other law);

4 (4) establish any general or special funds, accounts, or
 5 subaccounts, and controls on deposits to and disbursements
 6 from them, as it finds necessary, desirable, or convenient for
 7 the implementation of this chapter;

8 (5) procure insurance, other credit enhancements, and other
 9 financing arrangements for its bonds to fulfill its purposes
 10 under this chapter, including but not limited to municipal
 11 bond insurance and letters of credit;

12 (6) accept appropriations, gifts, grants, loans, or other aid
 13 from public or private entities;

14 (7) establish a stable source of revenue to be used for the
 15 purposes designated in this chapter;

16 (8) enter into one (1) or more sales agreements with the state
 17 for purchase of a portion of the amounts and revenues due to
 18 the state under the master settlement agreement, and of the
 19 state's rights to receive those amounts and revenues;

20 (9) issue bonds in one (1) or more series;

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

24 (11) manage its funds, obligations, and investments as
 25 necessary and as consistent with its purpose;

26 (12) without complying with IC 4-22-2, adopt, amend, and
 27 repeal bylaws, rules, and regulations not inconsistent with this
 28 chapter and necessary or convenient to regulate its affairs and
 29 to carry into effect the powers, duties, and purposes of the
 30 authority and conduct its business; and

31 (13) exercise any other power reasonably required,
 32 convenient, or desirable to implement the purposes of this
 33 chapter.

34 **The rule of law that any doubt as to the existence of a power of the**
 35 **authority shall be resolved against the existence of that power is**
 36 **abrogated. Any doubt as to the existence of a power of the**
 37 **authority shall be resolved in favor of its existence.**

38 **Sec. 21. The authority may not:**

39 (1) exercise the power of eminent domain; or

40 (2) levy taxes of any kind.

41 **Sec. 22. (a) The authority may issue its bonds in principal**
 42 **amounts in the principal amounts as may be necessary or**

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1 appropriate to provide sufficient funds for:

- 2 (1) the exercise of any of its powers or achievement of its
3 purposes;
4 (2) the payment of debt service on its bonds;
5 (3) the establishment of debt service or operating reserves to
6 secure the bonds;
7 (4) the costs of issuance of its bonds and credit enhancements,
8 if any; and
9 (5) all other financing costs or other expenditures of the
10 authority incident to and necessary to carry out its purposes
11 or powers.

12 The net proceeds of the bonds shall be deposited in the fund
13 specified by law, except that the net proceeds of refunding bonds
14 shall be deposited in accordance with a trust agreement of the
15 authority.

16 (b) Before issuing bonds under this chapter, the authority shall
17 publish a notice of its determination to issue the bonds. The notice
18 shall be published one (1) time in two (2) newspapers published and
19 of general circulation in the city of Indianapolis. No action to
20 contest the validity of:

- 21 (1) a series of bonds issued by the authority; or
22 (2) any sales agreement entered into by the authority and the
23 state related to the bonds;

24 may be brought after the fifteenth day following the publication of
25 the notice. If an action challenging the bonds or sales agreement is
26 not brought within the time prescribed by this subsection, the
27 bonds or sales agreement shall be conclusively presumed to be fully
28 authorized and valid under the laws of the state and any person or
29 entity is estopped from further questioning the authorization,
30 validity, execution, delivery, or issuance of the bonds or the sales
31 agreement.

32 (c) The bonds, when issued, shall have all the qualities of
33 negotiable instruments, subject to provisions for registration,
34 under IC 26-1 and are incontestable in the hands of a bona fide
35 purchaser or owner of the bond for value. Bonds issued under this
36 chapter are exempt from the registration requirements of
37 IC 23-2-1 and any other state securities registration statutes.

38 (d) The authority's bonds shall:

- 39 (1) bear the date or dates;
40 (2) mature at the time or times;
41 (3) be in the denominations;
42 (4) be in the form;

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- 1 (5) be registered or registrable in the manner;
 2 (6) be made transferable, exchangeable, and interchangeable;
 3 (7) be payable in the medium of payment and at the place or
 4 places;
 5 (8) be subject to the terms of redemption;
 6 (9) bear the fixed or variable rate or rates of interest;
 7 (10) be payable at the time or times; and
 8 (11) be sold at a public or negotiated sale in the manner and
 9 at the price or prices;

10 as the authority determines.

11 (e) The bonds shall be executed by one (1) or more officers of the
 12 authority and by the trustee or paying agent. Execution of the
 13 bonds may be by manual or facsimile signature.

14 (f) The bonds of the authority are subject to the terms,
 15 conditions, covenants, and protective provisions that are found
 16 necessary or desirable by the authority, including, but not limited
 17 to, pledges of the authority's assets, setting aside of reserves, and
 18 other provisions the authority finds are necessary or desirable for
 19 the security of bondholders.

20 (g) Any pledge of revenues to be derived by the authority under
 21 a sales agreement or from any other source, and the right to
 22 receive revenues under a sales agreement or from any other
 23 source, or any pledge of a special fund, account, or subaccount
 24 created by the authority, together with any investment earnings, is
 25 valid and binding at the time the pledge is made. Property so
 26 pledged is immediately subject to the lien of the pledge without any
 27 physical delivery thereof or further act. The lien of such a pledge
 28 is valid and binding as against all parties having claims of any kind
 29 in tort, contract, or otherwise against the authority, regardless of
 30 whether the parties have notice of the lien. Notwithstanding any
 31 other provision of law to the contrary, the resolution or trust
 32 agreement of the authority or any other instrument by which the
 33 pledge is created need not be recorded or filed except in the
 34 records of the authority to perfect the pledge.

35 (h) Neither a member of the board nor a person executing bonds
 36 or notes issued under this article is liable personally on the bonds
 37 or notes.

38 (i) The authority may, out of any funds or revenues available
 39 therefor, purchase its bonds in the open market.

40 Sec. 23. (a) The bonds issued under this chapter by the authority
 41 constitute the special obligations only of the authority and are
 42 payable solely from and secured exclusively by the pledge by the

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1 authority of certain funds and revenues, and rights to receive funds
2 or revenues in accordance with this chapter. Neither the faith and
3 credit or taxing power of the state or any political subdivision of
4 the state is pledged to the payment of principal or interest on the
5 bonds. Each bond of the authority must plainly state on its face
6 that the bond does not constitute an indebtedness or lending of the
7 credit of the state within the meaning or application of any
8 constitutional provision or limitation but that it is payable solely as
9 to both principal and interest from the funds, revenues, and rights
10 pledged under this chapter. The provisions of this chapter and the
11 covenants and undertakings of the authority as expressed in any
12 proceedings preliminary to or in connection with the issuance of
13 the bonds may be enforced by a bondholder by action for
14 injunction or mandamus against the authority or any officer,
15 agent, or employee of the authority, but no action for monetary
16 judgment may be brought against the state for any violations of
17 this chapter.

18 (b) All property of the authority is public property devoted to
19 an essential public and governmental function and purpose and is
20 exempt from all taxes and special assessments, direct or indirect,
21 of the state or a political subdivision of the state. All bonds issued
22 under this chapter are issued by a body corporate and politic of
23 this state, but not a state agency, and for an essential public and
24 governmental purpose, and the bonds, the interest thereon, the
25 proceeds received by the holder from the sale of the bonds to the
26 extent of the holder's cost of acquisition proceeds received upon
27 redemption prior to maturity, and proceeds received at maturity
28 and the receipt of the interest and proceeds are exempt from
29 taxation in the state for all purposes except the financial
30 institutions tax imposed under IC 6-5.5 or a state inheritance tax
31 imposed under IC 6-4.1.

32 **Sec. 24.** Contracts entered into by the authority shall be entered
33 into in the name of the authority and not in the name of the state
34 of Indiana. The obligations of the authority under the contracts are
35 obligations only of the authority and are not in any way obligations
36 of the state of Indiana.

37 **Sec. 25.** Bonds issued under the provisions of this chapter are
38 hereby made securities in which all public officers and agencies of
39 the state, all insurance companies, banking associations,
40 investment companies, executors, administrators, trustees, and
41 other fiduciaries may properly and legally invest funds, including
42 capital in their control or belonging to them. These bonds are



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1 hereby made securities that may properly and legally be deposited
 2 with and received by any officer or agency of the state for any
 3 purpose for which the deposit of bonds or obligations of the state
 4 is now or may hereafter be authorized by law.

5 **Sec. 26. (a) Without complying with any other law governing the**
 6 **sale or disposition of property by the state, the state may sell and**
 7 **assign to the authority, and the authority may purchase, all of the**
 8 **state's right to receive a portion not to exceed forty percent (40%)**
 9 **of the state's annual share of the amounts and revenues due to the**
 10 **state under the master settlement agreement, and of the state's**
 11 **rights to receive those amounts and revenues. The state, including**
 12 **the governor and the attorney general, may take any action**
 13 **necessary or convenient to facilitate and complete the sale. The**
 14 **authority may take any action necessary or convenient to facilitate**
 15 **and complete the purchase.**

16 **(b) A sale and assignment made under this section is**
 17 **irrevocable. All or a portion of the amounts and revenues, and the**
 18 **right to receive the amounts and revenues, sold to the authority**
 19 **shall be pledged to the bondholders. The sale and assignment shall**
 20 **constitute and be treated as a true sale and absolute transfer of the**
 21 **property so sold and assigned and not as a pledge or other security**
 22 **interest granted by the state for any borrowing. The**
 23 **characterization of a sale and assignment as an absolute transfer**
 24 **shall not be negated or adversely affected by the fact that only a**
 25 **portion of the amounts and revenues due to the state under the**
 26 **master settlement agreement is being sold and assigned, by the**
 27 **state's acquisition or retention of an ownership interest in the**
 28 **portion of the amounts and revenues due under the master**
 29 **settlement agreement not so sold and assigned, or for any other**
 30 **reason.**

31 **(c) The state hereby covenants and agrees with the holders of**
 32 **any bonds that so long as any bonds of the authority issued under**
 33 **this chapter are outstanding and unpaid, the state will not limit or**
 34 **alter the rights vested in the authority to fulfill the terms of any**
 35 **agreements made with, or make payments to, the holders of the**
 36 **bonds or in any way impair the rights and remedies of the**
 37 **bondholders, until the bonds, together with interest thereon, and**
 38 **all costs and expenses in connection with any action or proceedings**
 39 **by or on behalf of the bondholder are fully paid, satisfied, and**
 40 **discharged.**

41 **(d) The terms of any sales agreement must provide that on and**
 42 **after the effective date of the sale and assignment:**

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- 1 **(1) the state shall have no right, title, or interest in the**
- 2 **property sold and assigned;**
- 3 **(2) the property sold and assigned is the property of the**
- 4 **authority and not the property of the state;**
- 5 **(3) the property sold and assigned shall be owned, received,**
- 6 **held, and disbursed by the authority or its trustee or assignee,**
- 7 **and not by the state;**
- 8 **(4) none of the property sold and assigned shall be subject to**
- 9 **garnishment, levy, execution, attachment, or other process,**
- 10 **writ, (including writ of mandate), or remedy in connection**
- 11 **with the assertion or enforcement of any debt, claim,**
- 12 **settlement, or judgment against the state; and**
- 13 **(5) the portion of the amounts and revenues due under the**
- 14 **master settlement agreement that are sold and assigned to the**
- 15 **authority must be paid directly to the authority or its trustee**
- 16 **or assignee and shall not be considered money drawn from the**
- 17 **state treasury.**

18 **(e) Any sales agreement may include such other agreements and**
 19 **covenants of the state as may be permitted by the constitution of**
 20 **the state and as may be necessary or convenient for the sale and**
 21 **assignment of the portion of the amounts and revenues due under**
 22 **the master settlement agreement and the issuance of bonds to**
 23 **finance the purchase by the authority.**

- 24 **(f) The state shall:**
- 25 **(1) notify the independent auditor and the escrow agent under**
- 26 **the master settlement agreement that a portion of the**
- 27 **amounts and revenues due under the master settlement**
- 28 **agreement has been sold and assigned to the authority; and**
- 29 **(2) irrevocably instruct the independent auditor and the**
- 30 **escrow agent that, after the date of the notice under**
- 31 **subdivision (1), the portion of the amounts and revenues due**
- 32 **under the master settlement agreement sold and assigned to**
- 33 **the authority is to be paid directly to the trustee under the**
- 34 **trust agreement of the authority for the benefit of the owners**
- 35 **of the bonds secured by a pledge of those amounts and**
- 36 **revenues, until the bonds are no longer outstanding under the**
- 37 **resolution or trust agreement.**

38 **Sec. 27. Members of the board, the officers and employees of the**
 39 **authority, the agents of the authority, and any other persons**
 40 **executing bonds issued under this chapter are not subject to**
 41 **personal liability or accountability by reason of any act authorized**
 42 **by this chapter, including, without limitation, the issuance of**

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1 bonds, the failure to issue bonds, the execution of bonds, and the
2 exercise of any other powers contemplated by this chapter.

3 Sec. 28. (a) The authority is prohibited from filing a voluntary
4 petition under chapter 9 of the federal bankruptcy code or any
5 corresponding chapter or section that may, from time to time, be
6 in effect. A governmental officer, governmental organization, or
7 other entity or person may not authorize the authority to be a
8 debtor under chapter 9 of the federal bankruptcy code or any
9 successor or corresponding chapter or sections.

10 (b) This section shall be part of any contractual obligation owed
11 to the holders of bonds issued under this chapter. Any such
12 contractual obligation shall not subsequently be modified by state
13 law before the date that is three hundred sixty-six (366) days after
14 the date upon which the authority no longer has any bonds
15 outstanding.

16 Sec. 29. The authority shall dissolve not later than two (2) years
17 from the date of final payment of all of its outstanding bonds and
18 the satisfaction of all outstanding obligations of the authority,
19 except to the extent necessary to remain in existence to fulfill any
20 outstanding covenants or provisions with bondholders or third
21 parties made in accordance with this chapter. Upon dissolution of
22 the authority, all of the authority's property shall be transferred
23 and assigned to the state and the authority shall execute all
24 necessary assignments and other documents as may be necessary
25 or convenient to transfer and assign its property to the state,
26 including the authority's right, title, or ownership interest in
27 amounts and revenues due under the master settlement agreement,
28 which amounts shall be deposited in the state general fund.

29 Sec. 30. Before issuing any bonds, the authority shall enter into
30 a sales agreement that includes the agreement of the state to:

- 31 (1) diligently enforce the authority's right to receive the
- 32 portion of the amounts and revenues due under the master
- 33 settlement agreement and sold under the sales agreement, to
- 34 the full extent permitted by the master settlement agreement;
- 35 (2) diligently enforce the qualifying statute as contemplated
- 36 by the master settlement agreement against all tobacco
- 37 product manufacturers that are selling tobacco products in
- 38 Indiana and are not signatories to the master settlement
- 39 agreement;
- 40 (3) neither amend the master settlement agreement nor take
- 41 any other action that would in any way:

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(A) alter, limit, or impair the authority's right to receive the portion of the amounts and revenues due under the master settlement agreement and sold under the sales agreement;

(B) limit or alter the rights vested in the authority by this chapter or other law to fulfill its agreements with the bond owners; or

(C) impair the rights and remedies of the bond owners or the security for the bonds;

until the bonds, together with the interest on the bonds and all costs and expenses in connection with any action or proceedings by or on behalf of the bond owners, are fully paid and discharged (however, nothing in this subdivision shall be construed to preclude the state's regulation of smoking and taxation and regulation of the sale of cigarettes or other tobacco products);

(4) not amend, supersede, or repeal the qualifying statute in any way that would violate section 26(c) of this chapter; or

(5) take no action that would adversely affect the tax exempt status of any tax exempt bonds issued by the authority.

Sec. 31. The authority shall contract with an independent certified public accountant for an annual financial audit of the authority. The certified public accountant shall present an audit report not later than seven (7) months after the end of each fiscal year of the authority.

Sec. 32. The state board of accounts may at any time conduct an audit of the authority.

Sec. 33. The authority shall submit copies of its annual budget and the audit report referred to in section 31 of this chapter to the budget director, the legislative council, and the state board of accounts.

Sec. 34. Income or revenues of the authority not required to meet its obligations (including redemption obligations on its bonds) shall be paid over to the state general fund if directed by the governor.

Sec. 35. (a) As used in this section, "sale portion" means the portion of the punitive damage award payment that is equal to the percentage determined under section 26 of this chapter.

(b) This section applies upon the entry of a judgment that includes a punitive damage award in a civil action related to tobacco products in which:

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1 (1) the state of Indiana, or an agency of the state of Indiana,
2 is the party to the action receiving the award; and

3 (2) a tobacco manufacturer who participates in the master
4 settlement agreement is the party against whom the judgment
5 was entered.

6 IC 34-51-3-6 does not apply to such a punitive damage award.

7 (c) Upon entry of a judgment described in this section, the right
8 of the state of Indiana, or an agency of the state of Indiana, to
9 receive the sale portion of the punitive damage award payment
10 described in this section is assigned to the authority. For as long as
11 this assignment is in effect, any sale portion of a punitive damage
12 award payment received by the state of Indiana, or an agency of
13 the state of Indiana, in settlement of a judgment described in this
14 section or as satisfaction or partial satisfaction of a judgment to
15 which this section applies shall be considered to be held for the
16 benefit of the authority and shall be remitted immediately after
17 receipt of the payment, at the direction of the treasurer of state, to
18 the authority subject to any pledge under this chapter.

19 (d) The authority may spend money received under this section
20 in accordance with this chapter, subject to any pledge under this
21 chapter.

22 (e) That portion of the punitive damages award in excess of the
23 sale portion under this section shall be paid to the state of Indiana
24 or an agency of the state of Indiana, as applicable, and used as
25 otherwise provided by law.

26 (f) The assignment under this section terminates upon the
27 earlier of the date on which:

28 (1) the authority is dissolved pursuant to section 29 of this
29 chapter;

30 (2) all outstanding bonds and other agreements of the
31 authority have been paid in full or otherwise discharged; or

32 (3) a state court has entered a final judgment from which no
33 further appeal is allowed ordering the judgment debtor
34 tobacco manufacturer to pay the state both its obligations
35 under the master settlement agreement and any punitive
36 damages to be paid to the state without setoff, credit or
37 reduction of one (1) obligation on account of the other.

38 SECTION 2. IC 4-12-1-14.3, AS AMENDED BY P.L.291-2001,
39 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2003]: Sec. 14.3. (a) As used in this section, "master
41 settlement agreement" has the meaning set forth in IC 24-3-3-6.

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1 (b) There is hereby created the Indiana tobacco master settlement
2 agreement fund for the purpose of depositing and distributing money
3 received under the master settlement agreement. The fund consists of:

- 4 (1) all money received by the state under the master settlement
5 agreement;
6 (2) appropriations made to the fund by the general assembly; and
7 (3) grants, gifts, and donations intended for deposit in the fund.

8 (c) Money may be expended, transferred, or distributed from the
9 fund during a state fiscal year only in amounts permitted by subsections
10 (d) through (e), and only if the expenditures, transfers, or distributions
11 are specifically authorized by another statute.

12 (d) ~~The maximum amount of expenditures, transfers, or distributions~~
13 ~~that may be made from the fund during the state fiscal year beginning~~
14 ~~July 1, 2000, is determined under STEP THREE of the following~~
15 ~~formula:~~

16 ~~STEP ONE: Determine the sum of money received or to be~~
17 ~~received by the state under the master settlement agreement~~
18 ~~before July 1, 2001.~~

19 ~~STEP TWO: Subtract from the STEP ONE sum the amount~~
20 ~~appropriated by P.L.273-1999, SECTION 8, to the children's~~
21 ~~health insurance program from funds accruing to the state from~~
22 ~~the tobacco settlement for the state fiscal years beginning July 1,~~
23 ~~1999, and July 1, 2000.~~

24 ~~STEP THREE: Multiply the STEP TWO remainder by fifty~~
25 ~~percent (50%).~~

26 (e) (d) The maximum amount of expenditures, transfers, or
27 distributions that may be made from the fund during the state fiscal
28 year beginning July 1, ~~2001, 2003~~, and each state fiscal year after that
29 is determined under STEP THREE of the following formula:

30 ~~STEP ONE: Determine the amount of money received or to be~~
31 ~~received by payable to~~ the state under the master settlement
32 agreement during that state fiscal year.

33 ~~STEP TWO: Multiply Subtract from~~ the STEP ONE amount by
34 ~~sixty percent (60%): the amount of money that is payable to the~~
35 **Indiana tobacco settlement authority during that state fiscal**
36 **year under the terms of a sales agreement entered into under**
37 **IC 4-4-31.**

38 ~~STEP THREE: Add to the STEP TWO product remainder~~ any
39 amounts that were available for expenditure, transfer, or
40 distribution under this subsection or subsection (d) **accumulated**
41 **in the fund** during preceding state fiscal years but that were not
42 expended, transferred, or distributed.

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1 (f) The following amounts shall be retained in the fund and may not
2 be expended; transferred; or otherwise distributed from the fund:
3 (1) All of the money that is received by the state under the master
4 settlement agreement and remains in the fund after the
5 expenditures; transfers; or distributions permitted under
6 subsections (c) through (e).
7 (2) All interest that accrues from investment of money in the fund;
8 unless specifically appropriated by the general assembly. Interest
9 that is appropriated from the fund by the general assembly may
10 not be considered in determining the maximum amount of
11 expenditures; transfers; or distributions under subsection (e).
12 (g) (e) The fund shall be administered by the budget agency.
13 Notwithstanding IC 5-13, the treasurer of state shall invest the money
14 in the fund not currently needed to meet the obligations of the fund in
15 the same manner as money is invested by the public employees
16 retirement fund under IC 5-10.3-5. The treasurer of state may contract
17 with investment management professionals, investment advisors, and
18 legal counsel to assist in the investment of the fund and may pay the
19 state expenses incurred under those contracts from the fund. Interest
20 that accrues from these investments shall be deposited in the fund.
21 Money in the fund at the end of the state fiscal year does not revert to
22 the state general fund.
23 (h) (f) The state general fund is not liable for payment of a shortfall
24 in expenditures, transfers, or distributions from the Indiana tobacco
25 master settlement agreement fund or any other fund due to a delay,
26 reduction, or cancellation of payments scheduled to be received by the
27 state under the master settlement agreement. If such a shortfall occurs
28 in any state fiscal year, the budget agency shall make the full transfer
29 to the regional health facilities construction account and then reduce all
30 remaining expenditures, transfers, and distributions affected by the
31 shortfall.
32 SECTION 3. IC 8-9.5-9-2, AS AMENDED BY P.L.273-1999,
33 SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2003]: Sec. 2. As used in this chapter, "authority" means:
35 (1) an authority or agency established under IC 8-1-2.2 or
36 IC 8-9.5 through IC 8-23;
37 (2) the commission established under IC 4-13.5;
38 (3) only in connection with a program established under
39 IC 13-18-13 or IC 13-18-21, the bank established under IC 5-1.5;
40 or
41 (4) a fund or program established under IC 13-18-13 or
42 IC 13-18-21; or

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(5) the authority established under IC 4-4-31.

SECTION 4. IC 8-9.5-9-8, AS AMENDED BY P.L.273-1999, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) With respect to all leases and contracts entered into by the authority with the Indiana department of transportation, the Indiana department of administration, a fund or program established under IC 13-18-13 or IC 13-18-21, or any other entity to support obligations, the lease or contract may provide that payments under a swap agreement are treated as a debt service on the obligations or as additional rental or other payment due under the lease or contract as the authority may determine.

(b) The authority may determine that payments under a swap agreement may be integrated with payments on obligations for the purpose of meeting any statutory requirements related to the issuance of obligations. **The authority may also determine to secure its payments under the swap agreement with the same collateral securing the related obligations, either on a parity or a subordinate basis.**

SECTION 5. [EFFECTIVE JULY 1, 2003] **There is appropriated to the tobacco settlement authority established by IC 4-4-31, as added by this act, one hundred ninety-five million dollars (\$195,000,000) from the Indiana tobacco master settlement agreement fund for deposit in the same fund in which net proceeds of bonds issued by the authority must be deposited, as provided by IC 4-4-31, as added by this act. The money appropriated by this SECTION does not revert to the Indiana tobacco master settlement agreement fund at the close of any state fiscal year but remains available for distribution.**

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