WEST VIRGINIA CODE: §4-11A-12

§4-11A-12. Authorization of the sale of rights in the master settlement agreement.

(a) The sale of the state's share shall be authorized by an executive order issued by the Governor as authorized in this section. The executive order shall be received by the Secretary of State and filed in the state Register pursuant to section three, article two, chapter twenty-nine-a of this code: Provided, That the Governor shall not issue the executive order unless the aggregate collective amount of net sale proceeds received by the state from the sale of the state's share is more than $800 million.

(b) The Governor may 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 of the amounts received by the state under the master settlement agreement.

(c) The terms and conditions of the sale established in any sales agreement shall include the following:

(1) A requirement that the state enforce its right to collect all moneys due from the participating tobacco manufacturers pursuant to the provisions of the master settlement agreement, including, without limitation, the state's share that has been sold to the authority under a sales agreement, and, in addition, that the state shall diligently enforce the qualifying statute as contemplated in section IX (d)(2)(b) of the master settlement agreement and the complementary legislation against all tobacco product manufacturers selling tobacco products in the state and that are not in compliance with the qualifying statute or the complementary legislation, in each case in the manner and to the extent considered necessary in the judgment of the Attorney General of the state;

(2) A requirement that the state not agree to any amendment of the master settlement agreement, the qualifying statute, the complementary legislation, this article or the sales agreement that materially and adversely affects the authority's ability or rights to receive the state's share that has been sold to the authority or the authority's rights and powers under this article and the sales agreement;

(3) An agreement that the anticipated use by the state of sale proceeds received pursuant to the sales agreement shall be for the purposes set forth in this article;

(4) A requirement that the aggregate collective amount of net sale proceeds received by the state from the sale of the state's share shall not be less than $800 million;

(5) A requirement that the proceeds received by the state from the sale of the state's share be applied by the state upon receipt to the Consolidated Public Retirement Board for deposit into the state Teachers Retirement System to redeem a portion of the unfunded actuarial accrued liability;

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(6) A requirement that the state may receive from the authority, as the purchase price for the sale, any combination of cash, securities and direct or beneficial ownership interests in property, including, but not limited to, the allocable beneficial interest in the residual state's share cash flows not needed to meet the bond debt service allocable to the state's share purchased by the authority from the state, whether by an initial sale or sales of the authority's bonds;

(7) A requirement that the cost of issuance excluding fees for bond insurance, credit enhancements, liquidity facilities and rating agency fees, plus underwriter's discount and any other costs associated with the issuance shall not exceed, in the aggregate, the sum of one percent of the aggregate principal amount of the bonds issued; and

(8) A requirement that the state will pledge to and agree with the holders of the authority's bonds and with any person or entity that contracts with the authority in connection with the issuance of the bonds that the state will not alter, limit or impair: (i) The rights vested in the authority to receive the state's share, to exercise its powers, or the ability to fulfill the terms of any contract entered into with the holders of the authority's bonds or any person or entity with reference to the authority's bonds; and (ii) the rights and remedies of the holders of any of the authority's bonds. The state's pledge and agreement shall continue in full force and effect until the authority's legal commitments with respect to the authority's bonds and contracts have been discharged in full.

(d) Any sale made under this section shall be irrevocable. Any sale shall constitute and be treated as a true and absolute sale and absolute transfer of the property transferred and not as a pledge or other security interest for any borrowing.

(e) On or after the effective date of any sale, the state shall not have any right, title or interest in the portion of the state's share sold, and the portion of the state's share sold shall be the property of the authority and not the state. None of the property sold by the state pursuant to this section shall be subject to garnishment, levy, execution, attachment or other process, or remedy in connection with the assertion or enforcement of any debt, claim, settlement or judgment against the state.

(f) On or before the effective date of any sale, the state shall notify the escrow agent under the master settlement agreement of the sale and shall irrevocably direct the escrow agent under the master settlement agreement that, subsequent to that date, all payments constituting the state's share or a portion thereof shall be made directly to the authority or its designee.

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