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SB 185
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FILED

2007 APR -4 PM 3: 56

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 185

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND CARUTH,
BY REQUEST OF THE EXECUTIVE)

[Passed March 10, 2007; in effect from passage.]

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(BY SENATORS TOMBLIN, MR. PRESIDENT, AND CARUTH,
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[Passed March 10, 2007; in effect from passage.]

AN ACT to amend and reenact §4-11A-1, §4-11A-2 and §4-11A-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto fourteen new sections, designated §4-11A-1a, §4-11A-6, §4-11A-7, §4-11A-8, §4-11A-9, §4-11A-10, §4-11A-11, §4-11A-12, §4-11A-13, §4-11A-14, §4-11A-15, §4-11A-16, §4-11A-17 and §4-11A-18, all relating to legislative appropriation of tobacco settlement funds; setting forth legislative findings

and purposes; receipt of settlement funds and required deposit in West Virginia Tobacco Settlement Medical Trust Fund; receipt of settlement funds and required deposit in the West Virginia Tobacco Settlement Fund; creating Tobacco Settlement Finance Authority and providing for general powers; establishing governing board of the authority; defining staff of the authority; limiting liability; providing certain definitions; authorizing sale of rights in a master settlement agreement; authorizing bonds of the authority; providing for the use of proceeds of bonds of the authority; providing an exemption from state purchasing provisions; providing bankruptcy provisions; establishing the dissolution of the authority; ensuring a revenue source remains for the unfunded liabilities of the Old Fund to replace previous legislative appropriation of tobacco settlement funds for the benefit of the Old Fund; and construction of article.

Be it enacted by the Legislature of West Virginia:

That §4-11A-1, §4-11A-2 and §4-11A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto fourteen new sections, designated §4-11A-1a, §4-11A-6, §4-11A-7, §4-11A-8, §4-11A-9, §4-11A-10, §4-11A-11, §4-11A-12, §4-11A-13, §4-11A-14, §4-11A-15, §4-11A-16, §4-11A-17 and §4-11A-18, all to read as follows:

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS; CREATION OF TOBACCO SETTLEMENT FINANCE AUTHORITY.

§4-11A-1. Legislative findings and purpose.

1 (a) On the twenty-third day of November, one
2 thousand nine hundred ninety-eight, tobacco product

3 manufacturers entered into a settlement agreement with
4 the state. This master settlement agreement releases
5 those manufacturers from past, present and specific
6 future claims against them in return for payment of
7 annual sums of money to the state, obligates the
8 manufacturers to change their advertising and
9 marketing practices and requires the establishment by
10 the manufacturers of a national foundation for the
11 interests of public health.

12 (b) The revenues received pursuant to the master
13 settlement agreement are directly related to the past,
14 present and future costs incurred by the state for the
15 treatment of tobacco-related illnesses. The receipt of
16 revenues in the future is subject to the ongoing risk of
17 litigation against manufacturers or other events that
18 may adversely affect the financial strength of the
19 manufacturers. The purpose of this article is to
20 preserve the revenues received from the settlement.

21 (c) The receipt of funds in accordance with the master
22 settlement agreement shall be deposited only in
23 accordance with the provisions of this article.

24 (d) The state receives revenue each year under the
25 terms of the master settlement agreement with the
26 tobacco manufacturers. This revenue is used to fund
27 programs of vital importance to the people of West
28 Virginia and the Legislature finds that it is in the best
29 interest of the people of this state to protect these
30 revenues by the sale of the state's share to the Tobacco
31 Settlement Finance Authority created in section six of
32 this article.

§4-11A-1a. Legislative findings related to securitization of moneys received pursuant to master settlement agreement and previously dedicated to the Workers' Compensation Debt Reduction Fund.

1 (a) In December, two thousand five, the Governor
2 issued a proclamation regarding the privatization of the
3 workers' compensation system pursuant to section
4 eleven, article two-c, chapter twenty-three of this code,
5 thereby proclaiming that a revenue source had been
6 secured to satisfy the Old Fund liabilities as they occur;

7 (b) A portion of the revenue source secured to satisfy
8 the Old Fund liabilities as they occur was the first thirty
9 million dollars received pursuant to section IX(c)(1) of
10 the master settlement agreement and the anticipated
11 strategic compensation payments to be received
12 pursuant to section IX(c)(2) of the master settlement
13 agreement;

14 (c) For purposes of the proclamation, it was assumed
15 that the first thirty million dollars received pursuant to
16 section IX(c)(1) of the master settlement agreement and
17 the anticipated strategic compensation payments to be
18 received pursuant to section IX(c)(2) of the master
19 settlement agreement as calculated pursuant to
20 subsection (a), section twelve of this article would on a
21 calendar year basis provide a maximum of forty-five
22 million dollars per year to satisfy the Old Fund
23 liabilities as they occur;

24 (d) The Legislature finds and declares that replacing
25 the first thirty million dollars received pursuant to
26 section IX(c)(1) of the master settlement agreement and
27 the anticipated strategic compensation payments to be

28 received pursuant to section IX(c)(2) of the master
29 settlement agreement with fifty million, four hundred
30 thousand dollars pursuant to section eighteen of this
31 article for the benefit of the Old Fund, in combination
32 with the remaining portions of the revenue sources
33 secured for the unfunded liabilities of the Old Fund as
34 established in Enrolled Senate Bill No. 1004 during the
35 first extraordinary session of the Legislature, two
36 thousand five, will ensure that a revenue source has
37 been and will continue to remain secured to satisfy the
38 Old Fund liabilities as they occur; and thus all
39 conditions precedent to the issuance of the
40 proclamation by the Governor remain in effect.

**§4-11A-2. Receipt of settlement funds and required deposit in
West Virginia Tobacco Settlement Medical Trust
Fund until the first day of June, two thousand
five, then to Workers' Compensation Debt
Reduction Fund; deposit of strategic
compensation payments; transfer of trust fund
moneys.**

1 (a) The Legislature finds and declares that certain
2 dedicated revenues should be preserved in trust for the
3 purpose of stabilizing the state's health-related
4 programs and delivery systems. It further finds and
5 declares that these dedicated revenues should be
6 preserved in trust for the purpose of educating the
7 public about the health risks associated with tobacco
8 usage and establishing a program designed to reduce
9 and stop the use of tobacco by the citizens of this state
10 and in particular by teenagers.

11 (b) There is hereby created a special account in the
12 State Treasury, designated the West Virginia Tobacco

13 Settlement Medical Trust Fund, which shall be an
14 interest-bearing account and may be invested in the
15 manner permitted by section nine, article six, chapter
16 twelve of this code, with the interest income a proper
17 credit to the fund. Unless contrary to federal law, fifty
18 percent of all revenues received pursuant to the master
19 settlement agreement shall be deposited in this fund.
20 Funds paid into the account may also be derived from
21 the following sources:

22 (1) All interest or return on investment accruing to the
23 fund;

24 (2) Any gifts, grants, bequests, transfers or donations
25 which may be received from any governmental entity or
26 unit or any person, firm, foundation or corporation;

27 (3) Any appropriations by the Legislature which may
28 be made for this purpose; and

29 (4) Any funds or accrued interest remaining in the
30 Board of Risk and Insurance Management Physicians'
31 Mutual Insurance Company account created pursuant
32 to section seven, article twenty-f, chapter thirty-three of
33 this code on or after the first day of July, two thousand
34 four.

35 (c) (1) The moneys from the principal in the trust fund
36 may not be expended for any purpose, except that on
37 the first day of April, two thousand three, the Treasurer
38 shall transfer to the Board of Risk and Insurance
39 Management Physicians' Mutual Insurance Company
40 account created by section seven, article twenty-f,
41 chapter thirty-three of this code, twenty-four million
42 dollars from the West Virginia Tobacco Settlement

43 Medical Trust Fund for use as the initial capital and
44 surplus of the Physicians' Mutual Insurance Company
45 created pursuant to said article. The remaining moneys
46 in the trust fund resulting from interest earned on the
47 moneys in the fund and the return on investments of the
48 moneys in the fund shall be available only upon
49 appropriation by the Legislature as part of the state
50 budget and expended in accordance with the provisions
51 of section three of this article.

52 (2) Notwithstanding any other provision of this code
53 to the contrary, on the effective date of the amendment
54 and reenactment of this section during the regular
55 session of the Legislature in two thousand six, all
56 moneys in the trust fund and any interest or other
57 return earned thereon shall be transferred to the
58 revenue shortfall reserve fund - Part B created in
59 section twenty, article two, chapter eleven-b of this code
60 and the trust fund shall be closed. No provisions of the
61 amendments made to this section during the regular
62 session of the Legislature in two thousand six may be
63 construed to change the requirements of this section for
64 the deposit of revenues received pursuant to the master
65 settlement agreement into the Workers' Compensation
66 Debt Reduction Fund.

67 (d) Notwithstanding the preceding subsections to the
68 contrary, the first thirty million dollars of all revenues
69 received after the thirtieth day of June, two thousand
70 five, pursuant to section IX(c)(1) of the master
71 settlement agreement shall in the fiscal year beginning
72 the first day of July, two thousand five, and each fiscal
73 year thereafter, be deposited in the Workers'
74 Compensation Debt Reduction Fund established in the
75 State Treasury in section five, article two-d, chapter

76 twenty-three of this code. Receipts in excess of thirty
77 million dollars shall be deposited into the tobacco
78 settlement fund provided in section three of this article.

79 (e) Notwithstanding anything in this code to the
80 contrary, strategic compensation payments received
81 pursuant to section IX(c)(2) of the master settlement
82 agreement, beginning in two thousand eight, shall be
83 deposited in their entirety in the Workers'
84 Compensation Debt Reduction Fund.

85 (f) Notwithstanding anything in this code to the
86 contrary, on the effective date of the sale of the state's
87 share to the authority as authorized in this article, the
88 deposits and transfers provided in this section shall
89 cease and no longer be required.

**§4-11A-3. Receipt of settlement funds and required deposit in
the West Virginia Tobacco Settlement Fund.**

1 (a) There is hereby created in the State Treasury a
2 special revenue account, designated the Tobacco
3 Settlement Fund, which shall be an interest-bearing
4 account and may be invested in the manner permitted
5 by the provisions of article six, chapter twelve of this
6 code, with the interest income a proper credit to the
7 fund. Unless contrary to federal law, fifty percent of all
8 revenues received pursuant to the master settlement
9 agreement shall be deposited in this fund. These funds
10 shall be available only upon appropriation by the
11 Legislature as part of the state budget: *Provided*, That
12 for the fiscal year two thousand, the first five million
13 dollars received into the fund shall be transferred to the
14 Public Employees Insurance Reserve Fund created in
15 article two, chapter five-a of this code.

16 (b) Appropriations from the Tobacco Settlement Fund
17 are limited to expenditures for the following purposes:

18 (1) Reserve funds for continued support of the
19 programs offered by the Public Employees Insurance
20 Agency established in article sixteen, chapter five of
21 this code;

22 (2) Funding for expansion of the federal-state
23 Medicaid program as authorized by the Legislature or
24 mandated by the federal government;

25 (3) Funding for public health programs, services and
26 agencies; and

27 (4) Funding for any state-owned or -operated health
28 facilities.

29 (c) Notwithstanding anything in this code to the
30 contrary, on the effective date of the sale of the state's
31 share to the authority as authorized in this article, the
32 deposits and transfers provided in this section shall
33 cease and no longer be required.

§4-11A-6. Creation of Tobacco Settlement Finance Authority.

1 (a) The Tobacco Settlement Finance Authority is
2 hereby created and constitutes a body corporate and
3 politic, constituting a public corporation and
4 government instrumentality of the state and the
5 exercise of its powers pursuant to this article is an
6 essential governmental function.

7 (b) The authority shall not create any obligation of
8 this state or any political subdivision of this state within

9 the meaning of any constitutional or statutory debt
10 limitation.

11 (c) The authority shall not pledge the credit or taxing
12 power of the state or any political subdivision of this
13 state, or make its debts payable out of any moneys
14 except those of the authority specifically pledged for
15 their payment.

§4-11A-7. Definitions.

1 Unless the context clearly indicates otherwise, as used
2 in this article:

3 (a) "Authority" means the Tobacco Settlement
4 Finance Authority created in this article.

5 (b) "Board" means the governing board of the
6 authority.

7 (c) "Bonds" means bonds, notes and other obligations
8 and financing arrangements issued or entered into by
9 the authority pursuant to this article.

10 (d) "Complementary legislation" means article nine-d,
11 chapter sixteen of this code.

12 (e) "Interest rate agreement" means an interest rate
13 swap or exchange agreement, an agreement establishing
14 an interest rate floor or ceiling or both, or any similar
15 agreement. Any agreement may include the option to
16 enter into or cancel the agreement or to reverse or
17 extend the agreement.

18 (f) "Master settlement agreement" means the master

19 settlement agreement as defined in section one of this
20 article.

21 (g) "Net proceeds" means the amount of proceeds
22 remaining following each sale of bonds which are not
23 required by the authority to establish and fund reserve
24 funds, to fund an operating expense reserve for the
25 authority, to fund capitalized interest, if any, and to pay
26 the costs of issuance and other expenses and fees related
27 to the authorization and issuance of bonds.

28 (h) "Notes" means notes, warrants, loan agreements
29 and all other forms of evidence of indebtedness
30 authorized under this article.

31 (i) "Qualified investments" means investments of the
32 authority authorized pursuant to this article as
33 established by the authority pursuant to subdivision
34 (11), subsection (a), section eleven of this article.

35 (j) "Qualifying statute" has the meaning given that
36 term in the master settlement agreement, constituting
37 article nine-b, chapter sixteen of this code.

38 (k) "Sales agreement" means any agreement
39 authorized pursuant to this article in which the state
40 provides for the sale of all or a portion of the state's
41 share to the authority.

42 (l) "State's share" means all of the following:

43 (1) All payments required to be made by tobacco
44 product manufacturers to the state, and the state's
45 rights to receive the payments, under the master
46 settlement agreement.

47 (2) The state's rights in any collateral securing or
48 otherwise assuring the receipt of the moneys.

§4-11A-8. Governing board.

1 (a) The powers of the authority are vested in and shall
2 be exercised by a board of five individuals, consisting of
3 the Secretary of the Department of Administration, who
4 shall act as chairperson, the Treasurer of the State of
5 West Virginia, and three individuals, each appointed by
6 the Governor, who shall have skill and experience in
7 finance.

8 (b) Three members of the board constitute a quorum.

9 (c) The members shall elect a vice chairperson and
10 secretary, annually, and other officers as the members
11 determine necessary.

12 (d) Meetings of the board shall be held at the call of
13 the chairperson or when a majority of the members
14 request a meeting.

15 (e) The members of the board shall not receive
16 compensation by reason of their membership on the
17 board.

18 (f) Of the initial appointments made by the Governor
19 to the authority, two shall be for a term of two years
20 and two shall be for a term of three years. Members
21 appointed to the authority subsequent to the initial
22 appointments shall serve for terms of four years. Any
23 member whose term has expired shall serve until his or
24 her successor has been duly appointed and qualified.
25 Any person appointed to fill a vacancy shall serve only

26 for the unexpired term.

§4-11A-9. Staff; assistance by state officers, agencies and departments.

1 (a) The Secretary of the Department of Administration
2 shall furnish to the authority any secretarial, clerical,
3 technical, research and other services that are necessary
4 to the conduct of the business of the authority.

5 (b) State officers, agencies and departments may
6 render services to the authority within their respective
7 functions, as requested by the authority.

§4-11A-10. Limitation of liability.

1 Members of the board and persons acting on the
2 authority's behalf, while acting within the scope of their
3 employment or agency, are not subject to personal
4 liability resulting from carrying out the powers and
5 duties conferred on them under this article.

§4-11A-11. General powers.

1 (a) The authority has all the general powers necessary
2 to carry out its purposes and duties and to exercise its
3 specific powers, including, but not limited to, the power
4 to:

5 (1) Enter into sales agreements and acquire by
6 purchase, grant, lease, gift or otherwise from the state
7 its right, title and interest in and to the state's share,
8 including, without limitation, the rights of the state to
9 receive the moneys due to it under this article and the
10 rights in any collateral securing or otherwise assuring

11 the receipt of the moneys;

12 (2) Sell, pledge or assign, as security or consideration,
13 the state's share sold to the authority pursuant to one or
14 more sales agreements, to provide for and secure the
15 issuance and repayment of its bonds or to implement
16 alternative funding options;

17 (3) Issue and sell one or more series or classes of
18 bonds, notes or other obligations through public
19 bidding, private placement or negotiated underwriting
20 to finance the acquisition referred to in this article;

21 (4) Refund and refinance the authority's debts and
22 obligations and to manage its funds, obligations and
23 investments as necessary and if consistent with its
24 purpose;

25 (5) Enter into funding options consistent with this
26 article, including refunding and refinancing its debt and
27 obligations;

28 (6) Enter into credit enhancements, liquidity
29 agreements or interest rate agreements;

30 (7) Have perpetual succession as a public
31 instrumentality and agency of the state, until dissolved
32 in accordance with this article;

33 (8) Sue and be sued in its own name;

34 (9) Make and execute agreements, contracts and other
35 instruments with any public or private person, in
36 accordance with this chapter;

37 (10) Retain or employ counsel, auditors, investment
38 bankers, trustees, economic experts and any other
39 private consultants and advisors, on a contract basis or
40 otherwise, necessary or desirable for rendering legal,
41 banking, financial or other professional, management or
42 technical services or advice in connection with the
43 acquisition and financing referred to in this article and
44 pay for all of the services from the proceeds of the
45 bonds;

46 (11) Establish investment guidelines, designate
47 qualified investments and invest funds;

48 (12) Procure insurance, other credit enhancements,
49 liquidity agreements and other financing arrangements
50 and to execute instruments and contracts and to enter
51 into agreements convenient or necessary to facilitate
52 financing arrangements of the authority; and to fulfill
53 the purposes of the authority under this article,
54 including, but not limited to, any arrangements,
55 instruments, contracts and agreements as municipal
56 bond insurance, liquidity facilities, interest rate
57 agreements and letters of credit;

58 (13) Determine, in connection with the issuance of
59 bonds, and subject to the sales agreement, the terms,
60 documentation and other details of the financing;

61 (14) Hold, use, sell, convey, mortgage, pledge,
62 exchange or otherwise dispose of the state's share and
63 any proceeds or further rights associated with the
64 state's share;

65 (15) Establish a trust which is entitled to receive
66 revenues and bond proceeds of the authority that are in

67 excess of the authority's expenses, debt service and
68 contractual obligations and to transfer its ownership
69 interest in the trust to the state as the noncash portion
70 of the purchase price for the state's share; and

71 (16) Include in its agreements with the holders of the
72 bonds the nonimpairment pledge as described in
73 subdivision (8), subsection (c), section twelve of this
74 article.

75 (b) Other than the payments of debt service on its
76 bonds, the authority may not make payments or
77 distributions to private interests or private individuals
78 unless those payments are reasonable in amount and
79 paid in exchange for the performance of services.

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

1 (a) The sale of the state's share shall be authorized by
2 an executive order issued by the Governor as authorized
3 in this section. The executive order shall be received by
4 the Secretary of State and filed in the State Register
5 pursuant to section three, article two, chapter twenty-
6 nine-a of this code: *Provided*, That the Governor shall
7 not issue the executive order unless the aggregate
8 collective amount of net sale proceeds received by the
9 state from the sale of the state's share is more than eight
10 hundred million dollars.

11 (b) The Governor may sell and assign all or a portion
12 of the state's share to the authority pursuant to one or
13 more sales agreements for the purpose of securitization
14 of the amounts received by the state under the master
15 settlement agreement.

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

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

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

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

45 (4) A requirement that the aggregate collective
46 amount of net sale proceeds received by the state from

47 the sale of the state's share shall not be less than eight
48 hundred million dollars;

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

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

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

71 (8) A requirement that the state will pledge to and
72 agree with the holders of the authority's bonds and with
73 any person or entity that contracts with the authority in
74 connection with the issuance of the bonds that the state
75 will not alter, limit or impair: (i) The rights vested in
76 the authority to receive the state's share, to exercise its
77 powers, or the ability to fulfill the terms of any contract

78 entered into with the holders of the authority's bonds or
79 any person or entity with reference to the authority's
80 bonds; and (ii) the rights and remedies of the holders of
81 any of the authority's bonds. The state's pledge and
82 agreement shall continue in full force and effect until
83 the authority's legal commitments with respect to the
84 authority's bonds and contracts have been discharged in
85 full.

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

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

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

§4-11A-13. Authorization of bonds of the authority.

1 (a) The authority may issue bonds in more than one

2 series and, if bonds are issued, shall use the net
3 proceeds to purchase the state's share pursuant to the
4 sales agreement to be applied as set forth in section
5 twelve of this article. In connection with the issuance of
6 bonds and subject to the terms of the sales agreement,
7 the authority shall determine the terms and other
8 details of the financing. Bonds issued pursuant to this
9 section may be secured by a pledge of the state's share
10 purchased by the authority. The authority may also
11 issue refunding bonds, including advance refunding
12 bonds, for the purpose of refunding previously issued
13 bonds, and may issue other types of bonds, notes or
14 other debt obligations and financing arrangements
15 necessary to fulfill its purposes or the purposes of this
16 article.

17 (b) The authority may issue its bonds in principal
18 amounts which, in the opinion of the authority, are
19 necessary to provide sufficient funds for achievement of
20 its purposes, the payment of interest on its bonds, the
21 establishment of reserves to secure the bonds, the costs
22 of issuance of its bonds and all other expenditures of
23 the authority incident to and necessary to carry out its
24 purposes or powers. The bonds are investment
25 securities and negotiable instruments within the
26 meaning of and for the purposes of article eight, chapter
27 forty-six of this code, subject only to the provisions of
28 the notes or bonds for registration, unless otherwise
29 provided by resolution of the authority.

30 (c) Bonds issued by the authority are payable solely
31 and only out of the moneys, assets or revenues pledged
32 by the authority and are not a general obligation or
33 indebtedness of the authority or an obligation or
34 indebtedness of the state or any subdivision of the state.
35 The authority shall not pledge the credit or taxing

36 power of the state or any political subdivision of the
37 state, or create a debt or obligation of the state, or make
38 its debts payable out of any moneys except those of the
39 authority.

40 (d) Bonds of the authority shall state on their face that
41 they are payable both as to principal and interest solely
42 out of the assets of the authority pledged for their
43 purpose and do not constitute an indebtedness of the
44 state or any political subdivision of the state; are
45 secured solely by and payable solely from assets of the
46 authority pledged for such purpose; constitute neither
47 a general, legal nor moral obligation of the state or any
48 of its political subdivisions; and that the state has no
49 obligation or intention to satisfy any deficiency or
50 default of any payment of the bonds.

51 (e) Any amount pledged by the authority to be
52 received under any sales agreement is valid and binding
53 at the time the pledge is made. Amounts pledged and
54 then or thereafter received by the authority are
55 immediately subject to the lien of the pledge without
56 any physical delivery thereof or further act. The lien of
57 any pledge is valid and binding as against all parties
58 having claims of any kind against the authority whether
59 the parties have notice of the lien or not.
60 Notwithstanding any other provision of law, the pledge
61 is not subject to article nine, chapter forty-six of this
62 code. Notwithstanding any other provision to the
63 contrary, the resolution of the authority or any other
64 instrument by which a pledge is created need not be
65 recorded or filed to perfect the pledge.

66 (f) The proceeds of bonds issued by the authority may
67 be invested in any security or obligation approved by
68 the board and specified in the trust indenture or

69 resolution pursuant to which the bonds must be issued,
70 notwithstanding any other provision to the contrary
71 provided that any sales proceeds derived from tax
72 exempt bonds are invested in a manner prescribed by
73 the board so as to maintain the tax exempt status of the
74 bonds.

75 (g) The exercise of the powers granted to the authority
76 by this article will be in all respects an essential
77 governmental function and for the benefit of the people
78 of the state and is a public purpose. The authority, its
79 property, income and all bonds and all interest and
80 income thereon are exempt from all taxation by this
81 state and any county, municipality, political subdivision
82 or agency thereof.

83 (h) Bonds of the authority shall comply with all of the
84 following:

85 (1) The bonds may be issued in one or more series and
86 shall be in a form, issued in denominations, carry such
87 registration privileges and payable over terms and with
88 rights of redemption as the board prescribes in the trust
89 indenture or resolution authorizing their issuance;

90 (2) The bonds shall be fully negotiable instruments
91 under the laws of this state and may be sold at prices, at
92 public or private sale, and in a manner as prescribed by
93 the board; and

94 (3) The bonds are subject to the terms, conditions and
95 covenants providing for the payment of the principal,
96 redemption premiums, if any, interest which may be
97 fixed or variable, including, but not limited to, zero
98 coupon bonds and capital appreciation bonds, during
99 any period the bonds are outstanding, and other terms,

100 conditions, covenants and protective provisions
101 safeguarding payment as determined by the trust
102 indenture or resolution of the board authorizing their
103 issuance.

104 (i) The bonds issued under this article are securities in
105 which insurance companies and associations and other
106 persons engaged in the business of insurance; banks,
107 trust companies, savings associations, savings and loan
108 associations and investment companies; administrators,
109 guardians, executors, trustees and other fiduciaries; and
110 other persons authorized to invest in bonds or other
111 obligations of the state may properly and legally invest
112 funds, including capital, in their control or belonging to
113 them.

114 (j) Bonds must be authorized by a resolution of the
115 board. A resolution authorizing the issuance of bonds
116 may delegate to an officer of the authority the power to
117 negotiate and fix the details of an issue of bonds and of
118 their sale by an appropriate certificate of the authorized
119 officer or by execution and delivery of a trust indenture
120 or bond purchase agreement. The bonds and notes shall
121 be executed by the chairperson and secretary of the
122 authority, both of whom may use facsimile signatures.
123 In case any officer whose signature, or a facsimile of
124 whose signature, appears on any bonds or notes ceases
125 to be an officer before delivery of the bonds or notes,
126 the signature or facsimile is nevertheless sufficient for
127 all purposes the same as if he or she had remained in
128 office until the delivery.

129 (k) The authority may issue one or more series of
130 bonds at any time or times so that interest on the bonds
131 may be or remain exempt from federal taxation or to
132 comply with the purposes specified in this article:

133 *Provided*, That the state shall covenant and agree to
134 invest any funds received from the sales agreement
135 which were derived from tax exempt bonds issued by
136 the authority in a manner prescribed from the
137 authority.

138 (l) In connection with the issuance of any bonds
139 authorized and issued pursuant to this section, and in
140 addition to the funds and accounts established
141 elsewhere in this article, the board may, under the trust
142 indenture or resolution pursuant to which the bonds are
143 issued, establish any other accounts, subaccounts or
144 reserves determined necessary by the board.

145 (m) While bonds of the authority are outstanding, the
146 state shall not agree to any amendment of the master
147 settlement agreement, the qualifying statute, the
148 complementary legislation, this article or the sales
149 agreement that materially and adversely affects the
150 authority's ability or rights to receive the state's share
151 that has been sold to the authority or the authority's
152 rights and powers under this article and the sales
153 agreement. The provision of this section shall be part of
154 the contractual obligation owed to the holders of the
155 authority's bonds.

§4-11A-14. Exemption from purchasing provisions.

1 The provisions of article three, chapter five-a of this
2 code shall not apply to the authority with respect to
3 contracts entered into by the authority in carrying out
4 the public and essential governmental functions set
5 forth in this article and are exempt from the laws of the
6 state which provide for competitive bids and hearings
7 in connection with contracts and for review as to the
8 form of contracts by the office of the Attorney General

9 of the state.

§4-11A-15. Bankruptcy.

1 Notwithstanding any other provision of law, the
2 authority is not authorized, and no governmental officer
3 or organization shall authorize the authority to become
4 a debtor in a case under the United States bankruptcy
5 code, Title 11 of the United States Code, to make an
6 assignment for the benefit of creditors or to become the
7 subject of any similar case or proceeding. The
8 provisions of this section shall be part of any
9 contractual obligation owed to holders of any bonds
10 issued pursuant to this article and shall not be modified
11 by the state prior to the date which is three hundred
12 sixty-six days after which the authority no longer has
13 any bonds outstanding.

§4-11A-16. Dissolution of the authority; distribution of assets.

1 The authority shall dissolve not sooner than three
2 hundred sixty-six days after it no longer has any bonds
3 outstanding and no later than two years from the date
4 of final payment of all outstanding bonds and the
5 satisfaction of all outstanding obligations of the
6 authority, except to the extent necessary to remain in
7 existence to fulfill any outstanding covenants or
8 provisions with bondholders or third parties made in
9 accordance with this article. Upon dissolution of the
10 authority, all assets of the authority shall be transferred
11 to the state, and the authority shall execute any
12 necessary assignments or instruments, including any
13 assignment of any right, title or ownership to the state
14 for receipt of payments under the master settlement
15 agreement. In no event shall the authority dissolve
16 while any bonds of the authority are outstanding.

§4-11A-17. Construction.

1 This article, being considered necessary for the
2 welfare of the state and its people, shall be liberally
3 construed to affect its purpose.

**§4-11A-18. Dedication of personal income tax proceeds as
replacement moneys for anticipated tobacco
master settlement agreement proceeds to the
Old Fund.**

1 (a) There is hereby dedicated an annual amount of
2 fifty million four hundred thousand dollars from annual
3 collections of the tax imposed by article twenty-one,
4 chapter eleven of this code as a portion of the revenue
5 source dedicated to satisfy the Old Fund liabilities as
6 they occur to provide a dollar for dollar replacement of
7 the first thirty million dollars received pursuant to
8 section IX(c)(1) of the master settlement agreement and
9 the anticipated strategic compensation payments to be
10 received pursuant to section IX(c)(2) of the master
11 settlement agreement as previously dedicated to the Old
12 Fund prior to the sale of state's share to the Tobacco
13 Settlement Finance Authority. No portion of this
14 amount may be pledged for payment of debt service on
15 revenue bonds issued pursuant to article two-d, chapter
16 twenty-three of this code.

17 (b) Notwithstanding any other provision of this code
18 to the contrary, beginning immediately after the sale of
19 the state's share to the Tobacco Settlement Finance
20 Authority, fifty million four hundred thousand dollars
21 from collections of the tax imposed by article twenty-
22 one, chapter eleven of this code shall be deposited each
23 calendar year to the credit of the Old Fund created in
24 article two-d, chapter twenty-three of this code in

25 accordance with the following schedule. Each calendar
26 month, except for July, August and September each
27 year, five million six hundred thousand dollars shall be
28 transferred, on or before the twenty-eighth day of the
29 month, to the Workers' Compensation Debt Reduction
30 Fund created in article two-d, chapter twenty-three of
31 this code. The transfers pursuant to this section are in
32 addition to the transfers pursuant to section ninety-six
33 of article twenty-one, chapter eleven of this code.

34 (c) *Expiration.* — The transfers required by this
35 section shall continue to be made until the governor
36 certifies to the Legislature that an independent actuary
37 study determined that the unfunded liability of the Old
38 Fund, as defined in chapter twenty- three of this code,
39 has been paid or provided for in its entirety. No transfer
40 pursuant to this section shall be made thereafter.

Enr. Com. Sub. for S. B. No. 185] 28

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Ch White
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell Holmes
.....
Clerk of the Senate

Bryce A. Lee
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this
the *4th* Day of *April*, 2007.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 02 2007

Time 3:25 pm