

MICHIGAN TOBACCO SETTLEMENT FINANCE AUTHORITY ACT (EXCERPT)
Act 226 of 2005

129.264 Michigan tobacco settlement finance authority; creation; separate legal entity; issuance of bonds generally.

Sec. 4.

(1) The Michigan tobacco settlement finance authority is created as a public body corporate and politic within the department of treasury. The authority is a state institution within the meaning of section 9 of article II of the state constitution of 1963 and an instrumentality of this state exercising public and essential governmental functions. The exercise by the authority of the powers conferred by this act is an essential governmental function of this state.

(2) Notwithstanding the existence of common management, the authority shall be treated and accounted for as a separate legal entity with its separate corporate purposes as set forth in this act. The assets, liabilities, and funds of the authority shall not be consolidated or commingled with those of this state or of any entity capable of being a debtor in a case commenced under the federal bankruptcy code.

(3) The authority shall have power and is hereby authorized from time to time to issue bonds in the principal amount or amounts and with the maturities as the authority shall determine to be necessary to provide sufficient funds for achieving its authorized purposes, consisting of the purchase of all or a portion of the state's tobacco receipts under this act and the payment of or provision for financing costs.

(4) The board of the authority shall authorize the issuance of bonds by resolution. The authority may issue bonds, including refunding bonds, without obtaining the consent of any department, division, commission, board, bureau, or agency of this state and without any other proceedings or the occurrence of any other conditions other than those proceedings, conditions, or things that are specifically required by this act. Every issue of bonds shall be special revenue obligations payable from and secured by a pledge of encumbered tobacco revenues and other assets, including without limitation the proceeds of the bonds deposited in a reserve fund for the benefit of the owners of the bonds, earnings on funds of the authority and other funds as may become available, upon the terms and conditions as specified by the authority in the authority resolution under which the bonds are issued or in a related trust agreement or trust indenture.

(5) The authority may issue bonds to refund any bonds by the issuance of new bonds, whenever it considers the refunding expedient, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for restructuring or any of its other authorized purposes.

(6) For each issue of bonds, the authority shall determine all of the following:

(a) The date of issuance.

(b) Whether the bonds shall bear no interest, appreciate as to principal amount, bear interest at fixed or variable rates, or any combination of these.

(c) Whether the bonds shall be payable at or prior to maturity.

(d) When the bonds shall mature.

(e) Whether the authority may redeem the bonds prior to maturity, at what price, and under what conditions.

(f) The method of payment of principal of and interest on the bonds.

(g) The form, denominations, and places of payment of principal of and interest on the bonds.

(h) If any officer whose signature or the facsimile of whose signature appears on any bond shall cease to be that officer before the delivery of the bond, that signature or facsimile shall nevertheless be valid and sufficient for all purposes as if he or she had remained in office until delivery of the bond.

(i) Any other terms and conditions necessary to issue the bonds in fully marketable form.

(7) The authority may sell the bonds in the manner determined by the authority board, at public or private sale, and on either a competitive or negotiated basis. The authority shall disburse the net proceeds of the bonds to the state treasurer as provided in section 8.

(8) This act shall govern the creation, perfection, priority, and enforcement of any pledge of revenues or other security made by the authority. Each pledge made by the authority shall be valid and binding at the time the pledge is made. The encumbered tobacco revenues, reserves, or earnings pledged or earnings on the investment of the encumbered tobacco revenues, reserves, or earnings pledged shall immediately be subject to the lien of the pledge without any physical delivery or further act and the lien on that pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether the parties have notice of the lien or pledge, and without filing or recording the pledge. The resolution or other instrument by which a pledge is created does not have to be recorded.

(9) This act shall also govern the negotiability of bonds issued under this act. Any bonds issued under this act shall be fully negotiable within the meaning and for all purposes of the uniform commercial code. By accepting the bond or obligation, each owner of a bond or other obligation of the authority shall be conclusively considered to

have agreed that the bond is and shall be fully negotiable within the meaning and for all purposes of the uniform commercial code.

(10) In the discretion of the authority, any bonds and any ancillary facilities may be secured by a trust agreement or trust indenture by and between the authority and a trustee, which may be any trust company or bank having the powers of a trust company, whether located within or without this state. A trust agreement or trust indenture authorized under this subsection, or an authority resolution providing for the issuance of bonds may provide for the creation and maintenance of reserves as the authority shall determine to be proper and may include covenants setting forth the duties of the authority in relation to the bonds, the ancillary facilities, the income to the authority, the sale agreement, the encumbered tobacco revenues and residual interests. A trust agreement or trust indenture authorized under this subsection or an authority resolution may contain provisions respecting the custody, safeguarding, and application of all money and bonds and may contain provisions for protecting and enforcing the rights and remedies under the sale agreement of the owners of the bonds and benefited parties as may be reasonable and proper and not in violation of law. It shall be lawful for any bank or trust company incorporated under the laws of this state that may act as depository of the proceeds of bonds or of any other funds or obligations received on behalf of the authority to furnish indemnifying bonds or to pledge obligations as may be required by the authority. Any trust agreement or trust indenture authorized under this subsection or an authority resolution may contain other provisions as the authority may consider reasonable and proper for priorities and subordination among the owners of bonds and benefited parties.

(11) The authority may enter into, amend, or terminate, as it determines to be necessary or appropriate, any ancillary facilities for any of the following purposes:

(a) To facilitate the issuance, sale, resale, purchase, repurchase, or payment of bonds, or the making or performance of swap contracts, including without limitation bond insurance, letters of credit, and liquidity facilities.

(b) To attempt to hedge risk or achieve a desirable effective interest rate or cash flow.

(12) The authority may enter into, amend, or terminate any ancillary facility as it determines to be necessary or appropriate to place the obligations or investments of the authority, as represented by the bonds or the investment of their proceeds, in whole or in part, on the interest rate, cash flow, or other basis desired by the authority, which facility may include without limitation contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. The authority may enter into these contracts or arrangements in connection with, or incidental to, entering into, or maintaining any agreement that secures bonds of the authority or any investment, or contract providing for investments, of reserves or similar facility guaranteeing an investment rate for a period of years.

(13) The determination by the authority that an ancillary facility or the amendment or termination of an ancillary facility is necessary or appropriate is conclusive. The authority may determine the terms and conditions of an ancillary facility, including without limitation provisions as to security, default, termination, payments, remedy, and consent to service of process.

(14) Bonds and ancillary facilities may contain a recital that they are issued pursuant to this act, which recital is conclusive evidence of the validity of the bonds and any ancillary facility and the regularity of the proceedings relating to the bonds and ancillary facilities.

(15) A member of the board or an officer, appointee, or employee of the authority shall not be subject to personal liability when acting in good faith within the scope of his or her authority or on account of liability of the authority. The board may defend and indemnify a member of the board or an officer, appointee, or employee of the authority against liability arising out of the discharge of his or her official duties. The authority may indemnify and procure insurance indemnifying members of the board and other officers and employees of the authority from personal loss or accountability for liability asserted by a person with regard to bonds or other obligations of the authority, or from any personal liability or accountability by reason of the issuance of the bonds or other obligations or by reason of any other action taken or the failure to act by the authority. The authority may also purchase and maintain insurance on behalf of any person against the liability asserted against the person and incurred by the person in any capacity or arising out of the status of the person as a member of the board or an officer or employee of the authority, whether or not the authority would have the power to indemnify the person against that liability under this subsection.

(16) A member, officer, employee or agent of the authority shall not have an interest, either directly or indirectly, in any business organization engaged in any business, contract or transaction with the authority or in any contract of any other person engaged in any business with the authority, or in the purchase, sale, lease or transfer of any property to or from the authority.

(17) Bonds issued under this act are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(18) The issuance of bonds under this act is subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

(19) A resolution of the authority authorizing bonds, or the provisions of a trust agreement or trust indenture authorized by resolution of the authority, may delegate to an officer or other employee of the authority, or an agent designated by the authority, for the period of time as the authority determines, the power to cause the issue, sale,

and delivery of the bonds within limits on those bonds established by the authority as to any of the following:

- (a) The form.
- (b) The maximum interest rate or rates.
- (c) The maturity date or dates.
- (d) The purchase price.
- (e) The denominations.
- (f) The redemption premiums.
- (g) The nature of the security.
- (h) The selection of an applicable interest rate index.
- (i) Other terms and conditions with respect to the issuance of the bonds as the authority shall prescribe.
- (20) The board shall rotate bond counsel when issuing bonds under this act. The board shall authorize and issue

bonds in a manner that provides that not less than 2 financial institutions or brokerage firms are involved in marketing and underwriting the bonds. Not less than 1 of the 2 financial institutions or brokerage firms described in this subsection shall meet all of the following:

- (a) Be chartered in this state.
- (b) Have 1/3 or more of its branch offices located in this state.
- (c) Have 25% or more of its employees located in this state.

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005

Compiler's Notes: For transfer of powers and duties of Michigan tobacco settlement finance authority, and its board of directors, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.