

HOUSE BILL 1597

B2

8lr3470

By: **Delegate Schuh**

Introduced and read first time: March 3, 2008

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Tobacco Settlement Securitization Authority Act**

3 FOR the purpose of establishing the Maryland Tobacco Settlement Securitization
4 Authority; providing for the membership of the Board of Directors of the
5 Authority; authorizing the Board to exercise certain powers; requiring the
6 Board to submit a certain report; authorizing the Authority to issue certain
7 bonds; requiring the Authority to pay certain proceeds from certain bonds to the
8 State according to a certain agreement; requiring the proceeds to be deposited
9 in a certain fund; authorizing the State to sell certain rights to certain
10 payments from the tobacco Master Settlement Agreement to the Authority;
11 authorizing certain agreements between the State and the Authority; requiring
12 the Governor to include in the annual budget bill a certain appropriation to the
13 Authority; requiring the Authority to certify to the Secretary of Budget and
14 Management a certain amount needed to pay the debt service on certain bonds;
15 requiring certain obligations to contain a certain statement; defining certain
16 terms; and generally relating to the establishment of the Maryland Tobacco
17 Settlement Securitization Authority.

18 BY adding to

19 Article – State Finance and Procurement
20 Section 7–316
21 Annotated Code of Maryland
22 (2006 Replacement Volume and 2007 Supplement)

23 BY repealing and reenacting, with amendments,

24 Article – State Finance and Procurement
25 Section 7–317 and 7–326
26 Annotated Code of Maryland
27 (2006 Replacement Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – State Finance and Procurement**

4 **7-316.**

5 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
6 MEANINGS INDICATED.

7 (2) “AUTHORITY” MEANS THE MARYLAND TOBACCO
8 SETTLEMENT SECURITIZATION AUTHORITY.

9 (3) “BOARD” MEANS THE BOARD OF DIRECTORS OF THE
10 AUTHORITY.

11 (4) “BONDS” MEANS THE OBLIGATIONS ISSUED UNDER THIS
12 SECTION AND PAYABLE SOLELY FROM THE SECURITIZED PORTION.

13 (5) “CIGARETTE RESTITUTION FUND” MEANS THE CIGARETTE
14 RESTITUTION FUND ESTABLISHED UNDER § 7-317 OF THIS SUBTITLE.

15 (6) “MASTER SETTLEMENT AGREEMENT” MEANS THE 1998
16 AGREEMENT AS MAY BE AMENDED FROM TIME TO TIME, EXECUTED BY THE
17 STATE TOGETHER WITH VARIOUS OTHER STATES, THE DISTRICT OF COLUMBIA,
18 THE COMMONWEALTH OF PUERTO RICO, GUAM, THE VIRGIN ISLANDS,
19 AMERICAN SAMOA, AND THE NORTHERN MARIANAS AND PARTICIPATING
20 TOBACCO MANUFACTURERS TO SETTLE TOBACCO LITIGATION MATTERS.

21 (7) “PURCHASE AGREEMENT” MEANS A CONTRACT, AS
22 AUTHORIZED UNDER THIS SECTION, BETWEEN THE AUTHORITY AND THE
23 STATE.

24 (8) “RESIDUAL INTEREST” MEANS THE PORTION OF THE
25 PAYMENTS RECEIVED FROM THE CIGARETTE RESTITUTION FUND BY THE
26 AUTHORITY THAT IS NOT ANNUALLY REQUIRED TO:

27 (I) REPAY THE HOLDERS OF THE BONDS;

28 (II) ESTABLISH AND REPLENISH ANY RESERVE FUNDS
29 CREATED IN CONNECTION WITH THE ISSUANCE OF THE BONDS;

30 (III) PAY ANY OTHER COSTS OF THE AUTHORITY INCURRED
31 IN CONNECTION WITH THE ISSUANCE OF THE BONDS; OR

1 (IV) PAY THE ACTUAL, REASONABLE, AND NECESSARY
2 EXPENSES OF THE AUTHORITY TO IMPLEMENT THIS SECTION.

3 (9) "SECURITIZED PORTION" MEANS THE PORTION OF THE
4 APPROPRIATION TO THE AUTHORITY FROM THE CIGARETTE RESTITUTION
5 FUND THAT IS NEEDED TO PAY:

6 (I) IN THE FISCAL YEAR THE BONDS ARE ISSUED:

7 1. THE PRINCIPAL AND INTEREST ON THE BONDS
8 PAYABLE FIRST IN THAT FISCAL YEAR;

9 2. THE COSTS OF ISSUANCE OF THE BONDS IN AN
10 AMOUNT NOT TO EXCEED 3% OF THE INITIAL PRINCIPAL AMOUNT OF THE
11 BONDS;

12 3. ANY REQUIRED RESERVE FUNDS IN AN AMOUNT
13 NOT TO EXCEED 10% OF THE INITIAL PRINCIPAL AMOUNT OF THE BONDS; AND

14 4. REASONABLE AND NECESSARY EXPENSES OF THE
15 AUTHORITY AND ANY TRUSTEE TO IMPLEMENT THIS SECTION, NOT TO EXCEED
16 0.5% OF THE INITIAL PRINCIPAL AMOUNT OF THE BONDS; AND

17 (II) IN ANY SUBSEQUENT FISCAL YEAR:

18 1. THE PRINCIPAL AND INTEREST ON THE BONDS
19 PAYABLE FIRST IN THAT FISCAL YEAR;

20 2. ANY FUNDS NECESSARY TO REPLENISH THE
21 INITIAL REQUIRED RESERVE FUNDS IN AN AMOUNT NOT TO EXCEED 10% OF THE
22 PRINCIPAL AMOUNT OF THE BONDS;

23 3. ANY ANNUAL PAYMENT DUE AND PAYABLE ON THE
24 BONDS IN AN AMOUNT NOT TO EXCEED 1.5% OF THE PRINCIPAL AMOUNT OF THE
25 BONDS; AND

26 4. REASONABLE AND NECESSARY ANNUAL EXPENSES
27 OF THE AUTHORITY AND ANY TRUSTEE TO IMPLEMENT THIS SECTION, NOT TO
28 EXCEED 0.5% OF THE INITIAL PRINCIPAL AMOUNT OF THE BONDS.

29 (B) (1) THERE IS A MARYLAND TOBACCO SETTLEMENT
30 SECURITIZATION AUTHORITY.

1 (2) **THE AUTHORITY IS A BODY POLITIC AND CORPORATE AND IS**
2 **AN INSTRUMENTALITY OF THE STATE.**

3 (c) (1) **A BOARD OF DIRECTORS SHALL MANAGE THE AUTHORITY**
4 **AND EXERCISE ITS POWERS.**

5 (2) **THE BOARD CONSISTS OF THE FOLLOWING FIVE MEMBERS:**

6 (I) **THE STATE TREASURER;**

7 (II) **THE COMPTROLLER; AND**

8 (III) **THREE MEMBERS WHO ARE KNOWLEDGEABLE IN**
9 **SETTLEMENT SECURITIZATION, APPOINTED BY THE GOVERNOR WITH THE**
10 **ADVICE AND CONSENT OF THE SENATE.**

11 (3) **EACH MEMBER OF THE BOARD SHALL BE A RESIDENT OF THE**
12 **STATE.**

13 (4) (I) **THE TERM OF AN APPOINTED MEMBER IS 4 YEARS.**

14 (II) **AT THE END OF A TERM, A MEMBER CONTINUES TO**
15 **SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.**

16 (III) **A MEMBER WHO IS APPOINTED AFTER A TERM HAS**
17 **BEGUN SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS**
18 **APPOINTED AND QUALIFIES.**

19 (5) **THE GOVERNOR MAY REMOVE A MEMBER FOR**
20 **INCOMPETENCE OR MISCONDUCT.**

21 (6) **THE BOARD MAY:**

22 (I) **ADOPT BYLAWS FOR THE CONDUCT OF ITS BUSINESS;**
23 **AND**

24 (II) **EXERCISE ANY POWER POSSESSED BY A PRIVATE**
25 **CORPORATION IN PERFORMING THE FUNCTIONS AUTHORIZED UNDER THIS**
26 **SECTION.**

27 (7) **THE BOARD SHALL SUBMIT ANNUALLY TO THE GOVERNOR**
28 **AND, SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE**
29 **GENERAL ASSEMBLY A REPORT OF THE ACTIVITIES OF THE AUTHORITY**

1 DURING THE PRECEDING YEAR AND ANY RECOMMENDATIONS FOR ACTIONS
2 APPROPRIATE TO FURTHER ITS PURPOSES.

3 (D) (1) THE STATE MAY SELL TO THE AUTHORITY ALL OF THE
4 STATE'S RIGHT, TITLE, AND INTEREST IN AND TO THAT PORTION OF THE
5 STREAM OF PAYMENTS DEPOSITED INTO THE CIGARETTE RESTITUTION FUND
6 FROM THE MASTER SETTLEMENT AGREEMENT EQUAL TO THE SECURITIZED
7 PORTION, IN EXCHANGE FOR:

8 (I) A CASH PAYMENT IN THE AMOUNT OF THE NET SALES
9 PROCEEDS OF THE BONDS TO THE PUBLIC SCHOOL CONSTRUCTION FUND
10 UNDER § 7-326 OF THIS SUBTITLE; AND

11 (II) DELIVERY OF THE RESIDUAL INTEREST TO THE
12 GENERAL FUND.

13 (2) THE TERMS AND CONDITIONS OF THE PURCHASE AGREEMENT
14 SHALL BE DETERMINED BY THE MEMBERS OF THE BOARD AFTER
15 CONSULTATION WITH THE ATTORNEY GENERAL AS EVIDENCED BY THEIR
16 EXECUTION OF THE PURCHASE AGREEMENT.

17 (E) (1) IN ACCORDANCE WITH THIS SECTION, THE AUTHORITY MAY
18 ISSUE BONDS, NOTES, AND OTHER OBLIGATIONS, INCLUDING REFUNDING
19 REVENUE BONDS AT OR BEFORE MATURITY, FOR AN INITIAL TERM NOT TO
20 EXCEED 40 YEARS, TO FINANCE OR ASSIST IN THE FINANCING OF PUBLIC
21 SCHOOL CONSTRUCTION.

22 (2) THE AUTHORITY MAY ISSUE BONDS THAT ARE TAX-EXEMPT
23 OR TAXABLE.

24 (3) PROCEEDS FROM THE SALE OF THE BONDS AND OTHER
25 MONEYS RECEIVED BY THE AUTHORITY IN ACCORDANCE WITH THE PURCHASE
26 AGREEMENT SHALL BE USED TO PAY THE STATE A CASH PAYMENT IN THE
27 AMOUNT OF THE NET SALES PROCEEDS OF THE BONDS AND MAY ALSO BE USED
28 TO:

29 (I) PAY COSTS OF ISSUANCE OF THE BONDS;

30 (II) ESTABLISH AND FUND RESERVES; AND

31 (III) PAY OTHER NECESSARY AND REASONABLE EXPENSES
32 AND FEES RELATED TO THE ISSUANCE OF THE BONDS.

1 **(4) BONDS ISSUED UNDER THIS SECTION MAY NOT BE DEEMED TO**
2 **CONSTITUTE A DEBT, LIABILITY, OR PLEDGE OF THE FULL FAITH AND CREDIT**
3 **OF THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE AND SHALL BE**
4 **PAYABLE SOLELY FROM, AND SECURED BY, THE PAYMENTS OF THE**
5 **SECURITIZED PORTION TO THE AUTHORITY FROM THE CIGARETTE**
6 **RESTITUTION FUND.**

7 **(F) ON OR BEFORE AUGUST 30 OF EACH YEAR, THE BOARD SHALL**
8 **CERTIFY TO THE SECRETARY OF BUDGET AND MANAGEMENT THE ANNUAL**
9 **SECURITIZED PORTION REQUIRED TO BE APPROPRIATED TO THE AUTHORITY**
10 **FROM THE CIGARETTE RESTITUTION FUND IN THE FOLLOWING FISCAL YEAR.**

11 7-317.

12 (a) There is a Cigarette Restitution Fund.

13 (b) (1) The Fund is a continuing, nonlapsing fund that is not subject to §
14 7-302 of this subtitle.

15 (2) There shall be credited to the Fund all revenues consisting of funds
16 received by the State from any source resulting, directly or indirectly, from any
17 judgment against or settlement with tobacco product manufacturers, tobacco research
18 associations, or any other person in the tobacco industry relating to litigation,
19 administrative proceedings, or any other claims made or prosecuted by the State to
20 recover damages for violations of State law.

21 (3) There shall be credited to the Fund all moneys collected under §
22 24-508 of the Health – General Article or § 5-608 of the Labor and Employment
23 Article.

24 (c) The Treasurer shall:

25 (1) invest and reinvest the Fund in the same manner as other State
26 funds; and

27 (2) credit any investment earnings to the Fund.

28 (d) Expenditures from the Fund shall be made by an appropriation in the
29 annual State budget.

30 (e) (1) The Fund shall be expended subject to any restrictions on its use or
31 other limitations on its allocation that are:

32 (i) expressly provided by statute;

33 (ii) required as a condition of the acceptance of funds; or

1 (iii) determined to be necessary to avoid recoupment by the
2 federal government of money paid to the Fund.

3 (2) Disbursements from the Fund to programs funded by the State or
4 with federal funds administered by the State shall be used solely to supplement, and
5 not to supplant, funds otherwise available for the programs under federal or State law
6 as provided in this section.

7 (f) (1) The Cigarette Restitution Fund shall be used to fund:

8 (i) the Tobacco Use Prevention and Cessation Program
9 established under Title 13, Subtitle 10 of the Health – General Article;

10 (ii) the Cancer Prevention, Education, Screening, and
11 Treatment Program established under Title 13, Subtitle 11 of the Health – General
12 Article; and

13 (iii) other programs that serve the following purposes:

14 1. reduction of the use of tobacco products by minors;

15 2. implementation of the Southern Maryland Regional
16 Strategy–Action Plan for Agriculture adopted by the Tri–County Council for Southern
17 Maryland with an emphasis on alternative crop uses for agricultural land now used for
18 growing tobacco;

19 3. public and school education campaigns to decrease
20 tobacco use with initial emphasis on areas targeted by tobacco manufacturers in
21 marketing and promoting cigarette and tobacco products;

22 4. smoking cessation programs;

23 5. enforcement of the laws regarding tobacco sales;

24 6. the purposes of the Maryland Health Care
25 Foundation under Title 20, Subtitle 5 of the Health – General Article;

26 7. primary health care in rural areas of the State and
27 areas targeted by tobacco manufacturers in marketing and promoting cigarette and
28 tobacco products;

29 8. prevention, treatment, and research concerning
30 cancer, heart disease, lung disease, tobacco product use, and tobacco control, including
31 operating costs and related capital projects;

32 9. substance abuse treatment and prevention programs;
33 and

1 10. any other public purpose.

2 (2) The provisions of this subsection may not be construed to affect the
3 Governor's powers with respect to a request for an appropriation in the annual budget
4 bill.

5 (g) (1) Amounts may only be expended from the Fund through
6 appropriations in the State budget bill as provided in this subsection.

7 (2) The Governor shall include in the annual budget bill
8 appropriations from the Fund equivalent to the lesser of \$100,000,000 or 90% of the
9 funds estimated to be available to the Fund in the fiscal year for which the
10 appropriations are made.

11 (3) (I) **NOTWITHSTANDING ANY OTHER PROVISION OF LAW, OF**
12 **THE FUNDS REQUIRED TO BE APPROPRIATED UNDER PARAGRAPH (2) OF THIS**
13 **SUBSECTION, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET BILL AN**
14 **APPROPRIATION TO THE MARYLAND TOBACCO SETTLEMENT SECURITIZATION**
15 **AUTHORITY IN THE AMOUNT CERTIFIED BY THE BOARD IN ACCORDANCE WITH §**
16 **7-316 OF THIS SUBTITLE.**

17 (II) **IF THE FUNDS IN THE CIGARETTE RESTITUTION FUND**
18 **ARE INSUFFICIENT TO SATISFY THE REQUIRED APPROPRIATION, THE**
19 **GOVERNOR SHALL APPROPRIATE THE FUNDS THAT ARE AVAILABLE BUT IS NOT**
20 **REQUIRED TO APPROPRIATE FUNDS FROM ANY OTHER SOURCE.**

21 (4) For each fiscal year for which appropriations are made, at least
22 50% of the appropriations shall be made for those purposes enumerated in subsection
23 (f)(1)(i), (ii), and (iii)1 through 9 of this section subject to the requirement of subsection
24 (e)(2) of this section.

25 [(4)] (5) For each fiscal year for which appropriations are made, at
26 least 30% of the appropriations shall be made for the purposes of the Maryland
27 Medical Assistance Program.

28 [(5)] (6) For each fiscal year for which appropriations are made,
29 0.15% of the Fund shall be appropriated for the purposes of enforcement of Title 16,
30 Subtitle 5 of the Business Regulation Article.

31 [(6)] (7) Any additional appropriations, not subject to paragraph (3),
32 [paragraph] (4), [or paragraph] (5), **OR (6)** of this subsection, may be made for any
33 lawful purpose.

34 (h) For each program, project or activity receiving funds appropriated under
35 subsection [(g)(3)] (G)(4) of this section, the Governor shall:

1 (1) develop appropriate statements of vision, mission, key goals, key
2 objectives, and key performance indicators and report these statements in a discrete
3 part of the State budget submission, which shall also provide data for key performance
4 indicators; and

5 (2) report annually, subject to § 2-1246 of the State Government
6 Article, to the General Assembly no later than October 1 on:

7 (i) total funds expended, by program and subdivision, in the
8 prior fiscal year from the Fund established under this section; and

9 (ii) the specific outcomes or public benefits resulting from that
10 expenditure.

11 7-326.

12 (a) In this section, “Fund” means the Public School Construction Fund.

13 (b) The Fund is a continuing, nonlapsing fund which is not subject to § 7-302
14 of this subtitle.

15 (c) The Fund consists of moneys transferred by:

16 (1) the Maryland Stadium Authority as required under § 13-715.2 of
17 the Financial Institutions Article; **AND**

18 (2) **THE MARYLAND TOBACCO SETTLEMENT SECURITIZATION**
19 **AUTHORITY UNDER § 7-316 OF THIS SUBTITLE.**

20 (d) The Treasurer shall separately hold, and the Comptroller shall account
21 for, the Fund.

22 (e) Subject to the approval of the Board of Public Works, moneys credited to
23 the Fund shall be used only for public school construction projects and public school
24 capital improvements consistent with the provisions of Title 5, Subtitle 3 of the
25 Education Article.

26 (f) Moneys from the Fund may only be transferred from the Fund to the
27 extent authorized by an appropriation as enacted in the annual State budget bill and
28 are not subject to transfer by budget amendment.

29 (g) It is the intent of the General Assembly that the funds provided for school
30 construction in the Fund be in addition to and not in substitution of general funds or
31 any other funds provided in the Governor’s allowance for public school construction.

32 SECTION 2. AND BE IT FURTHER ENACTED, That obligations issued under
33 this Act shall contain on their face a statement to the effect that neither the State of

1 Maryland nor any political subdivision of the State shall be obligated to pay the
2 principal of or interest on the obligations except from revenues specifically pledged to
3 them and that neither the full faith and credit nor the taxing power of the State or any
4 political subdivision of the State is pledged to the payment of the principal of or the
5 interest on the obligations.

6 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 June 1, 2008.