

By the Committee on Financial Services and Representative
Lacasa

1 A bill to be entitled
2 An act relating to tobacco settlement proceeds;
3 providing legislative intent; creating s.
4 215.5600, F.S.; providing definitions; creating
5 the Tobacco Settlement Financing Corporation;
6 providing purposes; providing for a governing
7 board of directors; providing for membership;
8 providing powers of the corporation;
9 authorizing the corporation to enter into
10 certain purchase agreements with the Department
11 of Banking and Finance for certain purposes;
12 authorizing the corporation to issue bonds for
13 certain purposes; providing requirements,
14 limitations, and procedures for issuing such
15 bonds; providing application; providing
16 limitations; limiting liability of the
17 corporation; exempting the corporation from
18 taxation; providing for continued existence of
19 the corporation; authorizing the Auditor
20 General to conduct financial audits of the
21 corporation; providing severability; specifying
22 powers of the Department of Banking and
23 Finance; amending s. 17.41, F.S.; revising
24 provisions relating to deposit into and
25 disbursement of moneys from the Tobacco
26 Settlement Clearing Trust Fund; authorizing
27 sale of the state's right, title, and interest
28 in the tobacco settlement agreement to the
29 corporation; providing for payment of certain
30 moneys into the Tobacco Settlement Clearing
31 Trust Fund; providing for deposit of net

1 proceeds of the sale of the tobacco settlement
2 agreement into the Lawton Chiles Endowment
3 Fund; amending s. 215.5601, F.S.; providing for
4 additional funding of the Lawton Chiles
5 Endowment Fund; revising provisions relating to
6 transfer of endowment moneys; clarifying
7 administration of the endowment; providing for
8 receipt by the endowment of minimum amounts in
9 certain fiscal years; providing an effective
10 date.

11
12 WHEREAS, the State of Florida is dependent upon future
13 payments from the tobacco industry pursuant to a 1997 lawsuit
14 settlement, and

15 WHEREAS, it has been determined that the settlement
16 proceeds shall be used to provide a perpetual source of
17 funding for health and human service programs for Florida's
18 disabled, children, and elderly, and

19 WHEREAS, there is considerable uncertainty as to the
20 amount of future payments under the settlement agreement and
21 the future ability of the tobacco industry to make the
22 payments required by the lawsuit settlement, and

23 WHEREAS, future funding for vital services to Florida's
24 most vulnerable citizens can be secured by selling a portion
25 of the state's right, title, and interest in and to the
26 tobacco settlement payments and depositing the sale proceeds
27 into the Lawton Chiles Endowment Fund to earn interest, NOW,
28 THEREFORE,

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30 Be It Enacted by the Legislature of the State of Florida:

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1 Section 1. Legislative intent.--The Legislature
2 intends to insulate future funding for health care programs
3 for children and the elderly from the risk of nonpayment of
4 amounts due under the tobacco settlement agreement. The
5 Legislature therefore intends to transfer said risk via the
6 sale of any or all of the state's right, title, and interest
7 in and to the tobacco settlement payments to a nonprofit
8 corporate entity.

9 Section 2. Section 215.5600, Florida Statutes, is
10 created to read:

11 215.5600 Tobacco Settlement Financing Corporation.--

12 (1) DEFINITIONS.--As used in this section:

13 (a) "Bond" means any bond, debenture, note,
14 certificate, or other obligation of financial indebtedness
15 issued by the corporation under this section.

16 (b) "Corporation" means the Tobacco Settlement
17 Financing Corporation created by this section.

18 (c) "Department" means the Department of Banking and
19 Finance or its successor.

20 (d) "Purchase agreement" means a contract between the
21 corporation and the State of Florida, acting by and through
22 the department, in which the State of Florida sells to the
23 corporation any or all of the state's right, title, and
24 interest in and to the tobacco settlement agreement,
25 including, but not limited to, the moneys to be received
26 thereunder.

27 (e) "State" means the State of Florida.

28 (f) "Tobacco settlement agreement" means the
29 settlement agreement, as amended, entered into by the state
30 and participating cigarette manufacturers in settlement of
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1 State of Florida v. American Tobacco Co., No. 95-1466AH (Fla.
2 15th Cir. Ct. 1996).

3 (2)(a) CORPORATION CREATION AND AUTHORITY.--The
4 Tobacco Settlement Financing Corporation is hereby created as
5 a special purpose, not-for-profit, public benefits
6 corporation, for the purpose of purchasing any or all of the
7 state's right, title, and interest in and to the tobacco
8 settlement agreement and issuing bonds to pay the purchase
9 price therefor which shall be used to provide funding for the
10 Lawton Chiles Endowment Fund. The corporation is authorized
11 to purchase any or all of the state's right, title, and
12 interest in and to the tobacco settlement agreement and to
13 issue bonds to pay the purchase price therefor. The proceeds
14 derived by the state from the sale of any or all of the
15 state's right, title, and interest in and to the tobacco
16 settlement agreement shall be used to fund the Lawton Chiles
17 Endowment Fund. The fulfillment of the purposes of the
18 corporation promotes the health, safety, and general welfare
19 of the people of this state and serves essential governmental
20 functions and a paramount public purpose.

21 (b) The corporation shall be governed by a board of
22 directors consisting of the Governor, the Treasurer, the
23 Comptroller, and the Attorney General, or their respective
24 designees, until January 7, 2003, at which time the board
25 shall include the Chief Financial Officer or the Chief
26 Financial Officer's designee, in place of the Treasurer and
27 the Comptroller or their designees. The executive director of
28 the State Board of Administration shall be the chief executive
29 officer of the corporation and shall direct and supervise the
30 administrative affairs and operation of the corporation. The
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1 corporation shall also have such other officers as may be
2 determined by the board of directors.

3 (c) The corporation shall have all the powers of a
4 corporate body under the laws of this state, including, but
5 not limited to, the powers of corporations under chapter 617,
6 to the extent not inconsistent with or restricted by the
7 provisions of this section, including, but not limited to, the
8 power to:

9 1. Adopt, amend, and repeal bylaws not inconsistent
10 with this section.

11 2. Sue and be sued.

12 3. Adopt and use a common seal.

13 4. Acquire, purchase, hold, lease, and convey real and
14 personal property, contract rights, general intangibles,
15 revenues, moneys, and accounts as may be proper or expedient
16 to carry out the purposes of the corporation and this section,
17 and to assign, convey, sell, transfer, lease, or otherwise
18 dispose of such property.

19 5. Elect or appoint and employ such officers, agents,
20 and employees as the corporation deems advisable to operate
21 and manage the affairs of the corporation, which officers,
22 agents, and employees may be employees of this state or of the
23 state officers and agencies represented on the board of
24 directors of the corporation.

25 6. Make and execute any and all contracts, trust
26 agreements, trust indentures, and other instruments and
27 agreements necessary or convenient to accomplish the purposes
28 of the corporation and this section.

29 7. Select, retain, and employ professionals,
30 contractors, or agents, which may include the Division of Bond
31 Finance of the State Board of Administration, as necessary or

1 convenient to enable or assist the corporation in carrying out
2 the purposes of the corporation.

3 8. Do any act or thing necessary or convenient to
4 carry out the purposes of the corporation.

5 (d) The corporation is authorized to enter into one or
6 more purchase agreements with the department pursuant to which
7 the corporation purchases any or all of the state's right,
8 title, and interest in and to the tobacco settlement agreement
9 and to execute and deliver any other documents necessary or
10 desirable to effectuate such purchase. The tobacco settlement
11 agreement moneys received pursuant to the purchase agreements
12 may be used for the costs and expenses of administration of
13 the corporation.

14 (e)1. The corporation may issue bonds payable from and
15 secured by amounts payable to the corporation pursuant to the
16 tobacco settlement agreement. In addition, the corporation is
17 authorized to issue bonds to refund previously issued bonds
18 and to deposit the proceeds of such bonds as provided in the
19 documents authorizing the issuance of such bonds. The
20 corporation is authorized to do all things necessary or
21 desirable in connection with the issuance of the bonds,
22 including, but not limited to, establishing debt service
23 reserves or other additional security for the bonds, providing
24 for capitalized interest, and executing and delivering any and
25 all documents and agreements. The term of any such bonds shall
26 not exceed 40 years and the rate of interest shall not exceed
27 12 percent. The corporation may sell bonds through competitive
28 bidding or negotiated contracts, whichever method of sale is
29 determined by the corporation to be in the best interest of
30 the corporation.

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1 2. The corporation does not have the power to pledge
2 the credit, the general revenues, or the taxing power of the
3 state or of any political subdivision of the state. The
4 obligations of the department and the corporation under the
5 purchase agreement and under any bonds shall not constitute a
6 general obligation of the state or a pledge of the faith and
7 credit or taxing power of the state. The bonds shall be
8 payable from and secured by payments received under the
9 tobacco settlement agreement and neither the state nor any of
10 its agencies shall have any liability on such bonds. Such
11 bonds shall not be construed in any manner as an obligation of
12 the state or any agency of the state, the department, the
13 State Board of Administration or entities for which the State
14 Board of Administration invests funds, or board members or
15 their respective agencies.

16 3. The corporation may validate any bonds issued
17 pursuant to this paragraph and the security for payment for
18 such bonds, as provided in chapter 75. The validation
19 complaint shall be filed only in the circuit court for Leon
20 County. The notice required under s. 75.06 shall be published
21 in Leon County and the complaint and order of the circuit
22 court shall be served only on the State Attorney for the
23 Second Judicial Circuit. The provisions of ss. 75.04(2) and
24 75.06(2) shall not apply to a validation complaint filed as
25 authorized in this paragraph. The validation of the first
26 bonds issued pursuant to this paragraph may be appealed to the
27 Supreme Court and such appeal shall be handled on an expedited
28 basis.

29 4. The state hereby covenants with the holders of
30 bonds of the corporation that the state will not limit or
31 alter the authority or the rights under this paragraph vested

1 in the corporation to fulfill the terms of any agreement,
2 including the terms of any purchase agreement, or in any way
3 impair the rights and remedies of such bondholders as long as
4 any such bonds remain outstanding unless adequate provision
5 has been made for the payment of such bonds pursuant to the
6 documents authorizing such bonds.

7 5. The corporation shall not take any action which
8 will materially and adversely affect the rights of holders of
9 any bonds issued under this paragraph as long as such bonds
10 are outstanding.

11 6. As long as the corporation has any bonds
12 outstanding, the corporation shall not have the authority to
13 file a voluntary petition under chapter 9 of the federal
14 Bankruptcy Code or such corresponding chapter or sections as
15 may be in effect, from time to time, and neither any public
16 officer nor any organization, entity, or other person shall
17 authorize the corporation to be or become a debtor under
18 chapter 9 of the federal Bankruptcy Code or such corresponding
19 chapter or sections as may be in effect, from time to time,
20 during any such period.

21 7. The corporation may contract with the State Board
22 of Administration to serve as trustee with respect to bonds
23 issued by the corporation as provided by this paragraph and to
24 hold, administer, and invest proceeds of such bonds and other
25 funds of the corporation and to perform other services
26 required by the corporation. The State Board of
27 Administration may perform such services and may contract with
28 others to provide all or a part of such services and to
29 recover the costs and expenses of providing such services.

30 (f) Notwithstanding any other provision of law, any
31 pledge of or other security interest in revenues, moneys,

1 accounts, contract rights, general intangibles, or other
2 personal property made or created by the corporation or
3 department resulting from the authority of this section shall
4 be valid, binding, and perfected from the time such pledge is
5 made or other security interest attaches without any physical
6 delivery of the collateral or further act, and the lien of any
7 such pledge or other security interest shall be valid,
8 binding, and perfected against all parties having claims of
9 any kind in tort, contract, or otherwise against the
10 corporation irrespective of whether such parties have notice
11 of such claims. No instrument by which such a pledge or
12 security interest is created or any financing statement need
13 be recorded or filed.

14 (g) The corporation shall not be deemed to be a
15 special district for purposes of chapter 189 or a unit of
16 local government for purposes of part III of chapter 218. The
17 provisions of chapter 120, part I of chapter 287, and ss.
18 215.57-215.83 shall not apply to this section, the corporation
19 created in this section, the purchase agreements entered into
20 pursuant to this section, or bonds issued by the corporation
21 as provided in this section, except that underwriters,
22 financial advisors, and legal counsel shall be selected in a
23 manner consistent with the rules adopted pursuant to the State
24 Bond Act for the selection of service providers and
25 underwriters.

26 (h) In no event shall any of the benefits or earnings
27 of the corporation inure to the benefit of any private person.

28 (i) There shall be no liability on the part of, and no
29 cause of action shall arise against, any board member of the
30 corporation or any employee of the corporation or the state
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1 for any actions taken by such board member or employee in the
2 performance of his or her duties under this section.

3 (j) The corporation is exempt from taxation and
4 assessments of any nature whatsoever upon the income of the
5 corporation and any property, assets, or revenues acquired,
6 received, or used in the furtherance of the purposes provided
7 in this section.

8 (k) The corporation and its corporate existence shall
9 continue until terminated by law; however, no such law shall
10 take effect as long as the corporation has bonds outstanding
11 unless adequate provision has been made for the payment of
12 such bonds pursuant to the documents authorizing the issuance
13 of such bonds. Upon termination of the existence of the
14 corporation, all rights and properties of the corporation in
15 excess of obligations of the corporation shall pass to and be
16 vested in the Lawton Chiles Endowment Fund.

17 (l) The Auditor General may conduct financial audits
18 of the accounts and records of the corporation.

19 (m) If any provision of this section or its
20 application to any person or circumstance is held invalid, the
21 invalidity shall not affect other provisions or applications
22 of this section which can be given effect without the invalid
23 provision or application, and under such circumstances the
24 provisions of this section are declared severable.

25 (3) POWERS OF THE DEPARTMENT.--

26 (a) The department is authorized, on behalf of the
27 state, to do all things necessary or desirable to assist the
28 corporation in the execution of the corporation's
29 responsibilities, including, but not limited to, entering into
30 one or more purchase agreements to sell to the corporation any
31 or all of the state's right, title, and interest in and to the

1 tobacco settlement agreement; executing any administrative
2 agreements with the corporation to fund the administration,
3 operation, and expenses of the corporation from moneys
4 appropriated for such purpose; and executing and delivering
5 any and all other documents and agreements necessary or
6 desirable in connection with the sale of any or all of the
7 state's right, title, and interest in and to the tobacco
8 settlement agreement to the corporation or the issuance of the
9 bonds by the corporation.

10 (b) The state hereby covenants with the holders of
11 bonds of the corporation that the state will not limit or
12 alter the authority or the rights under this section vested in
13 the department to fulfill the terms of any agreement,
14 including the terms of any purchase agreement, or in any way
15 impair the rights and remedies of such bondholders as long as
16 any such bonds remain outstanding unless adequate provision
17 has been made for the payment of such bonds pursuant to the
18 documents authorizing such bonds.

19 (c) The department is authorized, on behalf of the
20 state, to make any covenant, representation, or warranty
21 necessary or desirable in connection with the sale of any or
22 all of the state's right, title, and interest in and to the
23 tobacco settlement agreement to the corporation or the
24 issuance of the bonds by the corporation. Such covenants may
25 specifically include a covenant to take whatever actions are
26 necessary on behalf of the corporation or holders of the bonds
27 issued by the corporation to enforce the provisions of the
28 tobacco settlement agreement, and any rights and remedies
29 thereunder.

30 Section 3. Section 17.41, Florida Statutes, is amended
31 to read:

1 17.41 Department of Banking and Finance Tobacco
2 Settlement Clearing Trust Fund.--
3 (1) The Department of Banking and Finance Tobacco
4 Settlement Clearing Trust Fund is created within that
5 department.
6 (2) Funds to be credited to the Tobacco Settlement
7 Clearing Trust Fund shall consist of ~~all annual~~ payments
8 received by the state from settlement of State of Florida v.
9 American Tobacco Co., No. 95-1466AH (Fla. 15th Cir. Ct. 1996).
10 ~~All~~ Moneys received from the settlement and shall be deposited
11 into the trust fund ~~and~~ are exempt from the service charges
12 imposed under s. 215.20.
13 (3)(a) The state's right, title, and interest in and
14 to the tobacco settlement agreement may be sold to the Tobacco
15 Settlement Financing Corporation, created pursuant to s.
16 215.5600.
17 (b) Any moneys received by the state pursuant to any
18 residual interest retained in the tobacco settlement agreement
19 or the payments to be made under the tobacco settlement
20 agreement shall be deposited into the Tobacco Settlement
21 Clearing Trust Fund.
22 (4) Net proceeds of the sale of the tobacco settlement
23 agreement received by the state shall be immediately deposited
24 into the Lawton Chiles Endowment Fund, created in s.
25 215.5601(4), without deposit to the Tobacco Settlement
26 Clearing Trust Fund.
27 ~~(3) The State Board of Administration shall invest and~~
28 ~~reinvest the moneys in the trust fund in accordance with ss.~~
29 ~~215.44-215.53. Costs and fees of the State Board of~~
30 ~~Administration for providing such investment services shall be~~
31 ~~deducted from the earnings accruing to the trust fund.~~

1 ~~(5)~~(4) The department shall disburse funds, by
2 nonoperating transfer, from the Tobacco Settlement Clearing
3 Trust Fund to the tobacco settlement trust funds of the
4 various agencies in amounts equal to the annual appropriations
5 made from those agencies'trust funds in the General
6 Appropriations Act.

7 ~~(6)~~(5) Pursuant to the provisions of s. 19(f)(3), Art.
8 III of the State Constitution, the Tobacco Settlement Clearing
9 Trust Fund is exempt from the termination provisions of s.
10 19(f)(2), Art. III of the State Constitution.

11 Section 4. Paragraphs (a), (b), and (f) of subsection
12 (4), paragraphs (d) and (e) of subsection (5), and subsection
13 (7) of section 215.5601, Florida Statutes, are amended to
14 read:

15 215.5601 Lawton Chiles Endowment Fund.--

16 (4) LAWTON CHILES ENDOWMENT FUND; CREATION; PURPOSES
17 AND USES.--

18 (a) There is created the Lawton Chiles Endowment Fund,
19 to be administered by the State Board of Administration. The
20 endowment shall serve as a clearing trust fund not subject to
21 termination pursuant to s. 19(f), Art. III of the State
22 Constitution and shall be funded by settlement moneys received
23 from the tobacco industry and by moneys received from the sale
24 of the state's right, title, and interest in and to the
25 tobacco settlement agreement, including the right to receive
26 payments under such agreement. The endowment fund shall be
27 exempt from the service charges imposed by s. 215.20.

28 (b) Funds from the endowment shall be transferred
29 ~~distributed~~ by the board to the Tobacco Settlement Clearing
30 Trust Fund, created in s. 17.41,~~trust funds of the state~~
31 ~~agencies~~ in the amounts indicated by reference to the

1 legislative appropriations for the state agencies, except as
2 otherwise provided in this section.

3 (f) When advised by the Revenue Estimating Conference
4 that a deficit will occur with respect to the appropriations
5 from the tobacco settlement trust funds of the state agencies
6 ~~Tobacco Settlement Trust Fund~~ in any fiscal year, the Governor
7 shall develop a plan of action to eliminate the deficit.
8 Before implementing the plan of action, the Governor must
9 comply with the provisions of s. 216.177(2). In developing the
10 plan of action, the Governor shall, to the extent possible,
11 preserve legislative policy and intent, and, absent any
12 specific directions to the contrary in the General
13 Appropriations Act, any reductions in appropriations from the
14 tobacco settlement trust funds of the state agencies ~~Tobacco~~
15 ~~Settlement Trust Fund~~ for a fiscal year shall be prorated
16 among the purposes for which funds were appropriated from the
17 Tobacco Settlement Trust Fund for that year.

18 (5) ADMINISTRATION OF THE ENDOWMENT.--

19 (d) No later than August 15 and February 15 of each
20 year, ~~2000~~, the board shall report on the financial status of
21 the endowment to the Governor, the Speaker of the House of
22 Representatives, the President of the Senate, the chairs of
23 the respective appropriations and appropriate substantive
24 committees of each chamber, and the Revenue Estimating
25 Conference. ~~Thereafter, the board shall make a status report~~
26 ~~to such persons no later than August 15 and February 15 of~~
27 ~~each year.~~

28 (e) Accountability for funds from the endowment which
29 have been appropriated to a state agency ~~and distributed by~~
30 ~~the board~~ shall reside with the state agency. The board is not
31 responsible for the proper expenditure or accountability of

1 funds from the endowment after transfer ~~distribution~~ to the
2 Tobacco Settlement Clearing Trust Fund ~~a state agency~~.
3 (7) ENDOWMENT PRINCIPAL; ~~APPROPRIATION OF~~
4 ~~EARNINGS~~.--The endowment shall receive moneys from the sale of
5 the tobacco settlement agreement and following amounts are
6 appropriated from the Department of Banking and Finance
7 Tobacco Settlement Clearing Trust Fund in the following
8 amounts for the following fiscal years ~~to the Lawton Chiles~~
9 ~~Endowment Fund for Health and Human Services:~~
10 (a) For fiscal year 1999-2000, \$1.1 billion;
11 (b) For fiscal year 2000-2001, at least \$200 million;
12 (c) For fiscal year 2001-2002, at least \$200 million;
13 and
14 (d) For fiscal year 2002-2003, at least \$200 million.
15 Section 5. This act shall take effect upon becoming a
16 law.
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