

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,

29
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, the Attorney General, two directors appointed
24 from the membership of the Senate by the President of the
25 Senate, and two directors appointed from the membership of the
26 House of Representatives by the Speaker of the House of
27 Representatives. On January 7, 2003, the board shall include
28 the Chief Financial Officer or the Chief Financial Officer's
29 designee, in place of the Treasurer and the Comptroller or
30 their designees. The executive director of the State Board of
31 Administration shall be the chief executive officer of the

1 corporation and shall direct and supervise the administrative
2 affairs and operation of the corporation. The corporation
3 shall also have such other officers as may be determined by
4 the board of directors.

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

11 1. Adopt, amend, and repeal bylaws not inconsistent
12 with this section.

13 2. Sue and be sued.

14 3. Adopt and use a common seal.

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

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

27 6. Make and execute any and all contracts, trust
28 agreements, trust indentures, and other instruments and
29 agreements necessary or convenient to accomplish the purposes
30 of the corporation and this section, including but not limited
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1 to investment contracts, swap agreements, liquidity facilities
2 or the purchase of insurance or reinsurance products.

3 7. Select, retain, and employ professionals,
4 contractors, or agents, which may include the Division of Bond
5 Finance of the State Board of Administration, as necessary or
6 convenient to enable or assist the corporation in carrying out
7 the purposes of the corporation.

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

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

19 (e)1. The corporation may issue bonds payable from and
20 secured by amounts payable to the corporation pursuant to the
21 tobacco settlement agreement. In addition, the corporation is
22 authorized to issue bonds to refund previously issued bonds
23 and to deposit the proceeds of such bonds as provided in the
24 documents authorizing the issuance of such bonds. The
25 corporation is authorized to do all things necessary or
26 desirable in connection with the issuance of the bonds,
27 including, but not limited to, establishing debt service
28 reserves or other additional security for the bonds, providing
29 for capitalized interest, and executing and delivering any and
30 all documents and agreements. The total principal amount of
31 bonds issued by the corporation shall not exceed \$3.0 billion.

1 The principal amount of bonds issued in any single fiscal year
2 shall not exceed \$1.5 billion, beginning with the 2000-2001
3 fiscal year. The limitation on the principal amount of bonds
4 issued by the corporation shall not apply to bonds issued to
5 refund previously issued bonds. No series of bonds issued
6 shall have a true interest cost rate of more than 4 percent
7 over the yield on U.S. Treasury obligations which have a
8 maturity approximately equal to the average life of such
9 series of bonds. Satisfaction of the foregoing interest rate
10 limitation shall be determined on the date such bonds are sold
11 or a definitive agreement to sell such bonds at specified
12 prices or yields is executed and delivered. The corporation
13 may sell bonds through competitive bidding or negotiated
14 contracts, whichever method of sale is determined by the
15 corporation to be in the best interest of the corporation.

16 2. The corporation does not have the power to pledge
17 the credit, the general revenues, or the taxing power of the
18 state or of any political subdivision of the state. The
19 obligations of the department and the corporation under the
20 purchase agreement and under any bonds shall not constitute a
21 general obligation of the state or a pledge of the faith and
22 credit or taxing power of the state. The bonds shall be
23 payable from and secured by payments received under the
24 tobacco settlement agreement and neither the state nor any of
25 its agencies shall have any liability on such bonds. Such
26 bonds shall not be construed in any manner as an obligation of
27 the state or any agency of the state, the department, the
28 State Board of Administration or entities for which the State
29 Board of Administration invests funds, or board members or
30 their respective agencies.

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1 3. The corporation may validate any bonds issued
2 pursuant to this paragraph and the security for payment for
3 such bonds, as provided in chapter 75. The validation
4 complaint shall be filed only in the circuit court for Leon
5 County. The notice required under s. 75.06 shall be published
6 in Leon County and the complaint and order of the circuit
7 court shall be served only on the State Attorney for the
8 Second Judicial Circuit. The provisions of ss. 75.04(2) and
9 75.06(2) shall not apply to a validation complaint filed as
10 authorized in this paragraph. The validation of the first
11 bonds issued pursuant to this paragraph may be appealed to the
12 Supreme Court and such appeal shall be handled on an expedited
13 basis.

14 4. The state hereby covenants with the holders of
15 bonds of the corporation that the state will not limit or
16 alter the authority or the rights under this section vested in
17 the corporation to fulfill the terms of any agreement,
18 including the terms of any purchase agreement, or in any way
19 impair the rights and remedies of such bondholders until at
20 least one year and one day after which no such bonds remain
21 outstanding unless adequate provision has been made for the
22 payment of such bonds pursuant to the documents authorizing
23 such bonds.

24 5. The corporation shall not take any action which
25 will materially and adversely affect the rights of holders of
26 any bonds issued under this paragraph as long as such bonds
27 are outstanding.

28 6. Until at least one year and one day after which no
29 bonds of the corporation remain outstanding, the corporation
30 shall not have the authority to file a voluntary petition
31 under chapter 9 of the federal Bankruptcy Code or such

1 corresponding chapter or sections as may be in effect, from
2 time to time, and neither any public officer nor any
3 organization, entity, or other person shall authorize the
4 corporation to be or become a debtor under chapter 9 of the
5 federal Bankruptcy Code or such corresponding chapter or
6 sections as may be in effect, from time to time, during any
7 such period. The state hereby covenants with the holders of
8 bonds of the corporation that the state will not limit or
9 alter the denial of authority to file bankruptcy under this
10 paragraph until at least one year and one day after which no
11 bonds of the corporation remain outstanding.

12 7. The corporation may contract with the State Board
13 of Administration to serve as trustee with respect to bonds
14 issued by the corporation as provided by this paragraph and to
15 hold, administer, and invest proceeds of such bonds and other
16 funds of the corporation and to perform other services
17 required by the corporation. The State Board of
18 Administration may perform such services and may contract with
19 others to provide all or a part of such services and to
20 recover the costs and expenses of providing such services.

21 (f) Notwithstanding any other provision of law, any
22 pledge of or other security interest in revenues, moneys,
23 accounts, contract rights, general intangibles, or other
24 personal property made or created by the corporation or
25 department resulting from the authority of this section shall
26 be valid, binding, and perfected from the time such pledge is
27 made or other security interest attaches without any physical
28 delivery of the collateral or further act, and the lien of any
29 such pledge or other security interest shall be valid,
30 binding, and perfected against all parties having claims of
31 any kind in tort, contract, or otherwise against the

1 corporation irrespective of whether such parties have notice
2 of such claims. No instrument by which such a pledge or
3 security interest is created or any financing statement need
4 be recorded or filed.

5 (g) The corporation shall not be deemed to be a
6 special district for purposes of chapter 189 or a unit of
7 local government for purposes of part III of chapter 218. The
8 provisions of chapter 120, part I of chapter 287, and ss.
9 215.57-215.83 shall not apply to this section, the corporation
10 created in this section, the purchase agreements entered into
11 pursuant to this section, or bonds issued by the corporation
12 as provided in this section, except that underwriters,
13 financial advisors, and legal counsel shall be selected in a
14 manner consistent with the rules adopted pursuant to the State
15 Bond Act for the selection of service providers and
16 underwriters.

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

19 (i) There shall be no liability on the part of, and no
20 cause of action shall arise against, any board member of the
21 corporation or any employee of the corporation or the state
22 for any actions taken by such board member or employee in the
23 performance of his or her duties under this section.

24 (j) The corporation is exempt from taxation and
25 assessments of any nature whatsoever upon the income of the
26 corporation and any property, assets, or revenues acquired,
27 received, or used in the furtherance of the purposes provided
28 in this section.

29 (k) The corporation and its corporate existence shall
30 continue until terminated by law; however, no such law shall
31 take effect until at least one year and one day after which no

1 bonds of the corporation remain outstanding unless adequate
2 provision has been made for the payment of such bonds pursuant
3 to the documents authorizing the issuance of such bonds. Upon
4 termination of the existence of the corporation, all rights
5 and properties of the corporation in excess of obligations of
6 the corporation shall pass to and be vested in the Lawton
7 Chiles Endowment Fund.

8 (1) The Auditor General may conduct financial audits
9 of the accounts and records of the corporation.

10 (m) If any provision of this section or its
11 application to any person or circumstance is held invalid, the
12 invalidity shall not affect other provisions or applications
13 of this section which can be given effect without the invalid
14 provision or application, and under such circumstances the
15 provisions of this section are declared severable.

16 (3) POWERS OF THE DEPARTMENT.--

17 (a) The department is authorized, on behalf of the
18 state, to do all things necessary or desirable to assist the
19 corporation in the execution of the corporation's
20 responsibilities, including, but not limited to, entering into
21 one or more purchase agreements to sell to the corporation any
22 or all of the state's right, title, and interest in and to the
23 tobacco settlement agreement; executing any administrative
24 agreements with the corporation to fund the administration,
25 operation, and expenses of the corporation from moneys
26 appropriated for such purpose; and executing and delivering
27 any and all other documents and agreements necessary or
28 desirable in connection with the sale of any or all of the
29 state's right, title, and interest in and to the tobacco
30 settlement agreement to the corporation or the issuance of the
31 bonds by the corporation.

1 (b) The state hereby covenants with the holders of
2 bonds of the corporation that the state will not limit or
3 alter the authority or the rights under this section vested in
4 the department to fulfill the terms of any agreement,
5 including the terms of any purchase agreement, or in any way
6 impair the rights and remedies of such bondholders until at
7 least one year and one day after which no such bonds remain
8 outstanding unless adequate provision has been made for the
9 payment of such bonds pursuant to the documents authorizing
10 such bonds.

11 (c) The department is authorized, on behalf of the
12 state, to make any covenant, representation, or warranty
13 necessary or desirable in connection with the sale of any or
14 all of the state's right, title, and interest in and to the
15 tobacco settlement agreement to the corporation or the
16 issuance of the bonds by the corporation. Such covenants may
17 specifically include a covenant to take whatever actions are
18 necessary on behalf of the corporation or holders of the bonds
19 issued by the corporation to enforce the provisions of the
20 tobacco settlement agreement, and any rights and remedies
21 thereunder. Nothing in this act shall be construed to bind or
22 in any way restrict the legislature by a contract or other
23 agreement entered into by the corporation pursuant to this
24 act.

25 Section 3. Section 17.41, Florida Statutes, is amended
26 to read:

27 17.41 Department of Banking and Finance Tobacco
28 Settlement Clearing Trust Fund.--

29 (1) The Department of Banking and Finance Tobacco
30 Settlement Clearing Trust Fund is created within that
31 department.

1 (2) Funds to be credited to the Tobacco Settlement
2 Clearing Trust Fund shall consist of ~~all annual~~ payments
3 received by the state from settlement of State of Florida v.
4 American Tobacco Co., No. 95-1466AH (Fla. 15th Cir. Ct. 1996).
5 ~~All~~ Moneys received from the settlement and shall be deposited
6 into the trust fund ~~and~~ are exempt from the service charges
7 imposed under s. 215.20.

8 (3)(a) All or any portion of the state's right, title,
9 and interest in and to the tobacco settlement agreement may be
10 sold to the Tobacco Settlement Financing Corporation, created
11 pursuant to s. 215.5600. Any such sale shall be a true sale
12 and not a borrowing.

13 (b) Any moneys received by the state pursuant to any
14 residual interest retained in the tobacco settlement agreement
15 or the payments to be made under the tobacco settlement
16 agreement shall be deposited into the Tobacco Settlement
17 Clearing Trust Fund.

18 (4) Net proceeds of the sale of the tobacco settlement
19 agreement received by the state shall be immediately deposited
20 into the Lawton Chiles Endowment Fund, created in s.
21 215.5601(4), without deposit to the Tobacco Settlement
22 Clearing Trust Fund.

23 ~~(3) The State Board of Administration shall invest and~~
24 ~~reinvest the moneys in the trust fund in accordance with ss.~~
25 ~~215.44-215.53. Costs and fees of the State Board of~~
26 ~~Administration for providing such investment services shall be~~
27 ~~deducted from the earnings accruing to the trust fund.~~

28 (5)~~(4)~~ The department shall disburse funds, by
29 nonoperating transfer, from the Tobacco Settlement Clearing
30 Trust Fund to the tobacco settlement trust funds of the
31 various agencies in amounts equal to the annual appropriations

1 made from those agencies' trust funds in the General
2 Appropriations Act.

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

7 Section 4. Paragraphs (a), (b), and (f) of subsection
8 (4), paragraphs (d) and (e) of subsection (5), and subsection
9 (7) of section 215.5601, Florida Statutes, are amended to
10 read:

11 215.5601 Lawton Chiles Endowment Fund.--

12 (4) LAWTON CHILES ENDOWMENT FUND; CREATION; PURPOSES
13 AND USES.--

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

24 (b) Funds from the endowment shall be transferred
25 ~~distributed~~ by the board to the Tobacco Settlement Clearing
26 Trust Fund, created in s. 17.41,~~trust funds of the state~~
27 ~~agencies~~ in the amounts indicated by reference to the
28 legislative appropriations for the state agencies, except as
29 otherwise provided in this section.

30 (f) When advised by the Revenue Estimating Conference
31 that a deficit will occur with respect to the appropriations

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

14 (5) ADMINISTRATION OF THE ENDOWMENT.--

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

24 (e) Accountability for funds from the endowment which
 25 have been appropriated to a state agency ~~and distributed by~~
 26 ~~the board~~ shall reside with the state agency. The board is not
 27 responsible for the proper expenditure or accountability of
 28 funds from the endowment after transfer distribution to the
 29 Tobacco Settlement Clearing Trust Fund ~~a state agency.~~

30 (7) ENDOWMENT PRINCIPAL; ~~APPROPRIATION OF~~

31 ~~EARNINGS~~.--The endowment shall receive moneys from the sale of

1 the state's right, title, and interest in and to the tobacco
2 settlement agreement and from following amounts are
3 ~~appropriated~~ transferred from the Department of Banking and
4 Finance Tobacco Settlement Clearing Trust Fund. Amounts to be
5 transferred from the clearing trust fund shall be in the
6 following amounts for the following fiscal years to the Lawton
7 ~~Chiles Endowment Fund for Health and Human Services:~~

- 8 (a) For fiscal year 1999-2000, \$1.1 billion;
9 (b) For fiscal year 2000-2001, \$200 million;
10 (c) For fiscal year 2001-2002, \$200 million; and
11 (d) For fiscal year 2002-2003, \$200 million.

12 Amounts to be transferred pursuant to paragraphs (b), (c), and
13 (d) shall be reduced by an amount equal to the lesser of \$200
14 million or the amount the endowment receives in that fiscal
15 year pursuant to the sale of the state's right, title, and
16 interest in and to the tobacco settlement agreement.

17 Section 5. This act shall take effect upon becoming a
18 law.

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