

By Senator Horne

6-1013-00

1 A bill to be entitled
2 An act relating to the Tobacco Settlement
3 Financing Corporation; declaring legislative
4 intent; creating s. 215.5603, F.S.; creating
5 the Tobacco Settlement Financing Corporation;
6 providing definitions; providing membership,
7 powers, duties, and functions of the
8 corporation; providing powers of the Department
9 of Banking and Finance with respect to the
10 corporation; amending s. 17.41, F.S.;
11 authorizing the sale of the state's right,
12 title, and interest in the tobacco settlement
13 agreement; amending s. 215.5601, F.S.;
14 redesignating recipients of funds; changing the
15 amounts transferred to the Lawton Chiles
16 Endowment Fund; providing an effective date.

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18 WHEREAS, The State of Florida is dependent upon future
19 payments from the tobacco industry pursuant to a 1997 lawsuit
20 settlement, and

21 WHEREAS, it has been determined that the settlement
22 proceeds will be used to provide a perpetual source of funding
23 for health and human service programs for Florida's disabled,
24 children, and elderly, and

25 WHEREAS, there is considerable uncertainty as to the
26 amount of future payments under the settlement agreement and
27 the future ability of the tobacco industry to make the
28 payments required by the lawsuit settlement, and

29 WHEREAS, future funding for vital services to Florida's
30 most vulnerable residents can be secured by selling a portion
31 of the state's right, title, and interest in and to the

1 tobacco settlement payments and depositing the sale proceeds
2 into the Lawton Chiles Endowment Fund to earn interest, NOW,
3 THEREFORE,

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

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

15 Section 2. Section 215.5603, Florida Statutes, is
16 created to read:

17 215.5603 Tobacco Settlement Financing Corporation.--

18 (1) DEFINITIONS.--As used in this section, the term:

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

22 (b) "Corporation" means the Tobacco Settlement
23 Financing Corporation created by this section.

24 (c) "Department" means the Department of Banking and
25 Finance or its successor.

26 (d) "Purchase agreement" means a contract between the
27 corporation and the state, acting by and through the
28 department, in which the state sells to the corporation any or
29 all of the state's right, title, and interest in and to the
30 tobacco settlement agreement, including, but not limited to,
31 the moneys to be received thereunder.

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

2 (f) "Tobacco settlement agreement" means the
3 settlement agreement, as amended, entered into by the state
4 and participating cigarette manufacturers in settlement of
5 State of Florida et al. v. American Tobacco Co., Case No.
6 95-1466AH (Fla. 15th Cir. Ct. 1996).

7 (2) CORPORATION CREATION AND AUTHORITY.--

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

25 (b) The corporation shall be governed by a board of
26 directors consisting of the Governor, the Treasurer, the
27 Comptroller, and the Attorney General, or their respective
28 designees, until January 7, 2003, at which time the board
29 shall include the Chief Financial Officer or the Chief
30 Financial Officer's designee, in place of the Treasurer and
31 the Comptroller or their designees. The executive director of

1 the State Board of Administration shall be the chief executive
2 officer of the corporation and shall direct and supervise the
3 administrative affairs and operation of the corporation. The
4 corporation shall also have such other officers as are
5 determined by the board of directors.

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

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

14 2. Sue and be sued.

15 3. Adopt and use a common seal.

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

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

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

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

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

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

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

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

17 (g) Notwithstanding any other provision of law, any
18 pledge of or other security interest in revenues, money,
19 accounts, contract rights, general intangibles, or other
20 personal property made or created by the corporation or
21 department resulting from the authority of this section shall
22 be valid, binding, and perfected from the time such pledge is
23 made or other security interest attaches without any physical
24 delivery or of the collateral or further act, and the lien of
25 any such pledge or other security interest shall be valid,
26 binding, and perfected against all parties having claim of any
27 kind in tort, in contract, or otherwise against the
28 corporation irrespective of whether such parties have notice
29 of such claims. No instrument by which such a pledge or
30 security interest is created nor any financing statement need
31 be recorded or filed.

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

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

22 (j) The corporation shall not take any action that
23 will materially and adversely affect the rights of holders of
24 any bonds issued under this section as long as such bonds are
25 outstanding.

26 (k) As long as the corporation has any bonds
27 outstanding, the corporation shall have the authority to file
28 a voluntary petition under chapter 9 of the federal Bankruptcy
29 Code or such corresponding chapter or sections as may be in
30 effect, from time to time, and neither any public officer nor
31 any organization, entity, or other person shall authorize the

1 corporation to be or become a debtor under chapter 9 of the
2 federal Bankruptcy Code or such corresponding chapter or
3 sections as are in effect, from time to time, during any such
4 period.

5 (l) The corporation may contract with the State Board
6 of Administration to serve as trustee with respect to bonds
7 issued by the corporation as provided by this section and to
8 hold, administer, and invest proceeds of such bonds and other
9 funds of the corporation and to perform other services
10 required by the corporation. The State Board of Administration
11 may perform such services and may contract with others to
12 provide all or a part of such services and to recover the
13 costs and expenses of providing such services.

14 (m) 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 chapter
18 215 do not apply to this section, the corporation created in
19 this section, the purchase agreements entered into under this
20 section, or bonds issued by the corporation as provided in
21 this section.

22 (n) In no event shall any of the benefits or earnings
23 of the corporation inure to the benefit of any private person.

24 (o) There shall be no liability on the part of, and no
25 cause of action shall arise against, any board member of the
26 corporation or any employee of the corporation or the state
27 for any action taken by them in the performance of their
28 duties under this section.

29 (p) The corporation is exempt from taxation and
30 assessments of any nature whatsoever upon its income and any
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1 property, assets, or revenues acquired, received, or used in
2 the furtherance of the purposes provided in this section.

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

12 (r) The Auditor General may conduct a financial audit
13 of the accounts and records of the corporation.

14 (s) If any provision of this section or its
15 application to any person or circumstance is held invalid, the
16 invalidity does not affect other provisions or applications of
17 the section which can be given effect without the invalid
18 provision or application, and under such circumstances the
19 provisions of this section are declared severable.

20 (3) POWERS OF THE DEPARTMENT.--

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

1 with the sale of any or all of the state's right, title, and
2 interest in and to the tobacco settlement agreement to the
3 corporation or the issuance of the bonds by the corporation.

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

13 (c) The department is authorized, on behalf of the
14 state, to make any covenant, representation, or warranty
15 necessary or desirable in connection with the sale of any or
16 all of the state's right, title, and interest in and to the
17 tobacco settlement agreement to the corporation or the
18 issuance of the bonds by the corporation.

19 Section 3. Section 17.41, Florida Statutes, is amended
20 to read:

21 17.41 Department of Banking and Finance Tobacco
22 Settlement Clearing Trust Fund.--

23 (1) The Department of Banking and Finance Tobacco
24 Settlement Clearing Trust Fund is created within that
25 department.

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

3 (3)(a) The state's right, title, and interest in and
4 to the tobacco settlement agreement may be sold to the Tobacco
5 Settlement Financing Corporation created in s. 215.5603.

6 (b) All moneys received by the state pursuant to any
7 residual interest in the tobacco settlement agreement or the
8 payments to be made under the tobacco settlement agreement
9 shall be deposited into the Tobacco Settlement Clearing Trust
10 Fund.

11 (4) Net proceeds of the sale of the tobacco settlement
12 agreement received by the state will be immediately deposited
13 into the Lawton Chiles Endowment Fund created in s. 215.5601
14 without deposit to the Tobacco Settlement Clearing Trust Fund.

15 ~~(3) The State Board of Administration shall invest and~~
16 ~~reinvest the moneys in the trust fund in accordance with ss.~~
17 ~~215.44-215.53. Costs and fees of the State Board of~~
18 ~~Administration for providing such investment services shall be~~
19 ~~deducted from the earnings accruing to the trust fund.~~

20 (5)(4) The department shall disburse funds, by
21 nonoperating transfer, from the Tobacco Settlement Clearing
22 Trust Fund to the tobacco settlement trust funds of the
23 various agencies in amounts equal to the annual appropriations
24 made from those agencies' trust funds in the General
25 Appropriations Act.

26 (6)(5) Pursuant to the provisions of s. 19(f)(3), Art.
27 III of the State Constitution, the Tobacco Settlement Clearing
28 Trust Fund is exempt from the termination provisions of s.
29 19(f)(2), Art. III of the State Constitution.

30 Section 4. Subsections (4), (5), and (7) of section
31 215.5601, Florida Statutes, are amended to read:

1 215.5601 Lawton Chiles Endowment Fund.--

2 (4) LAWTON CHILES ENDOWMENT FUND; CREATION; PURPOSES
3 AND USES.--

4 (a) There is created the Lawton Chiles Endowment Fund,
5 to be administered by the State Board of Administration. The
6 endowment shall serve as a clearing trust fund not subject to
7 termination pursuant to s. 19(f), Art. III of the State
8 Constitution and shall be funded by settlement moneys received
9 from the tobacco industry and by moneys received from the sale
10 of the state's right, title, and interest in and to the
11 tobacco settlement agreement, including the right to receive
12 payments under the agreement. The endowment fund shall be
13 exempt from the service charges imposed by s. 215.20.

14 (b) Funds from the endowment shall be transferred
15 ~~distributed~~ by the board to The Tobacco Settlement Clearing
16 Trust Fund created in s. 17.41, ~~funds of the state agencies~~ in
17 the amounts indicated by reference to the legislative
18 appropriations for the state agencies, except as otherwise
19 provided in this section.

20 (c) The state agencies shall use the funds from the
21 endowment to enhance or support increases in clients served or
22 in program costs in health and human services program areas.

23 (d) The Secretary of Health, the Secretary of Children
24 and Family Services, the Secretary of Elderly Affairs, and the
25 Director of Health Care Administration shall conduct meetings
26 to discuss program priorities for endowment funding prior to
27 submitting their budget requests to the Executive Office of
28 the Governor and the Legislature. The purpose of the meetings
29 shall be to gain consensus for priority requests and
30 recommended endowment funding levels for those priority

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1 requests. An agency head may not designate a proxy for these
2 meetings.

3 (e) Funds from the endowment may not be used to
4 supplant existing revenues.

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

19 (5) ADMINISTRATION OF THE ENDOWMENT.--

20 (a) The board is authorized to invest and reinvest
21 funds of the endowment in those securities listed in s.
22 215.47, in accordance with the fiduciary standards set forth
23 in s. 215.47(9) and consistent with an investment plan
24 developed by the executive director and approved by the board.
25 Costs and fees of the board for investment services shall be
26 deducted from the earnings accruing to the endowment.

27 (b) The endowment shall be managed as an annuity. The
28 investment objective shall be long-term preservation of the
29 real value of the principal and a specified regular annual
30 cash outflow for appropriation, as nonrecurring revenue. The
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1 schedule of annual cash outflow shall be included within the
2 investment plan adopted pursuant to paragraph (a).

3 (c) The board shall establish a separate account for
4 the funds of the endowment. The board shall design and operate
5 an investment portfolio that maximizes the financial return to
6 the endowment, consistent with the risks inherent in each
7 investment, and that is designed to preserve an appropriate
8 diversification of the portfolio.

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

18 (e) Accountability for funds from the endowment which
19 have been appropriated to a state agency ~~and distributed by~~
20 ~~the board~~ shall reside with the state agency. The board is not
21 responsible for the proper expenditure or accountability of
22 funds from the endowment after transfer ~~distribution~~ to the
23 Tobacco Settlement Clearing Trust Fund ~~a state agency~~.

24 (f) The board may collect a fee for service from the
25 endowment no greater than that charged to the Florida
26 Retirement System.

27 (7) ~~ENDOWMENT PRINCIPAL; APPROPRIATION OF~~
28 ~~EARNINGS.~~--The endowment shall receive moneys from the sale of
29 the tobacco settlement agreement following amounts ~~are~~
30 appropriated from the Department of Banking and Finance
31 Tobacco Settlement Clearing Trust Fund in the amounts and in

1 ~~the fiscal years as follows to the Lawton Chiles Endowment~~

2 ~~Fund for Health and Human Services:~~

3 (a) For fiscal year 1999-2000, \$1.1 billion;

4 (b) For fiscal year 2000-2001, at least \$200 million;

5 (c) For fiscal year 2001-2002, at least \$200 million;

6 and

7 (d) For fiscal year 2002-2003, at least \$200 million.

8 Section 5. This act shall take effect upon becoming a
9 law.

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SENATE SUMMARY

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Creates the Tobacco Settlement Financing Corporation to purchase all or part of the state's right, title, and interest in and to the tobacco settlement agreement and to issue bonds therefor. (See bill for details.)

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