

52:18B-1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2002 **CHAPTER:** 32

NJSA: 52:18B-1 ("Tobacco Settlement Financing Corporation Act")

BILL NO: A2502 (Substituted for S1588)

SPONSOR(S): Doria

DATE INTRODUCED: June 6, 2002

COMMITTEE: **ASSEMBLY:** Budget

SENATE: Budget and Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 30, 2002

SENATE: June 30, 2002

DATE OF APPROVAL: July 1, 2002

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (2nd reprint enacted)

A2502

[SPONSORS STATEMENT](#): (Begins on page 15 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

S1588

[SPONSORS STATEMENT](#): (Begins on page 16 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

Title 52.
Chapter 18B. (New)
Tobacco Settlement
Financing
Corporation.
§§1-14 -
C.52:18B-1
to 52:18B-14

P.L. 2002, CHAPTER 32, *approved July 1, 2002*
Assembly, No. 2502 (*Second Reprint*)

1 **AN ACT** creating and providing for the purposes and powers of the
2 Tobacco Settlement Financing Corporation, supplementing Title 52
3 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. This act shall be known and may be cited as the "Tobacco
9 Settlement Financing Corporation Act."

10

11 2. The purpose of this act is to authorize, create and establish a
12 corporation empowered to acquire from the State all or a portion of
13 the State's tobacco receipts; to authorize the sale by the State of all or
14 a portion of the State's tobacco receipts to the corporation; to
15 authorize the transfer to and the receipt by the corporation of such
16 tobacco receipts; to authorize the corporation to issue securities of the
17 corporation for the purposes authorized in this act, payable solely from
18 and secured solely by such portion of the State's tobacco receipts as
19 the corporation may designate and pledge to secure the securities,
20 together with the investment income thereon and any reserve funds
21 created by the corporation from any portion of the proceeds of such
22 securities; to authorize the corporation to hold and invest such portion
23 of the net proceeds of the sale of the securities pending direction by
24 the State and such portion of the State's tobacco receipts sold to the
25 corporation which are not pledged to secure securities of the
26 corporation; and to authorize the corporation to manage such portion
27 of the net proceeds of the sale of the securities pending direction by
28 the State and all or a portion of the State's tobacco receipts sold to the
29 corporation for the purposes and in the manner authorized in this act.

30

31 3. a. There is hereby established in, but not of, the Department of
32 Treasury a public body corporate and politic, with corporate
33 succession, to be known as the "Tobacco Settlement Financing
34 Corporation." The corporation is hereby constituted as an

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ABU committee amendments adopted June 17, 2002.

² Senate SBA committee amendments adopted June 27, 2002.

1 instrumentality of the State exercising public and essential
2 governmental functions, and the exercise by the corporation of the
3 powers conferred by this act shall be deemed and held to be an
4 essential governmental function of the State. Notwithstanding the
5 existence of common management, the corporation shall be treated and
6 accounted for as a separate legal entity with its separate corporate
7 purposes as set forth in this act. The assets, liabilities and funds of the
8 corporation shall be neither consolidated nor commingled with those
9 of the State or of any entity capable of being a debtor in a case
10 commenced under the federal bankruptcy code.

11 b. The corporation shall have and be governed by three members
12 who shall be the Commissioner of Health and Senior Services of the
13 State and the State Treasurer, who shall be members ex officio, and
14 one public member appointed by the Governor (who shall have
15 knowledge in the area of health care or the provision of health care)
16 who shall serve at the pleasure of the Governor; provided however,
17 the Governor may appoint the head of a principal department of the
18 State to replace the Commissioner of Health and Senior Services of
19 the State as a member. The State Treasurer shall serve as the
20 chairperson of the corporation. The corporation shall elect from
21 among its members a vice chairman. The powers of the corporation
22 shall be vested in the members thereof in office from time to time and
23 a majority of the total authorized membership of the corporation shall
24 constitute a quorum at any meeting thereof. Action may be taken and
25 motions and resolutions adopted by the corporation at any meeting
26 thereof by the affirmative vote of a majority of the members present.
27 No vacancy in the membership of the corporation shall impair the right
28 of a quorum of the members to exercise all the powers and perform all
29 the duties of the corporation.

30 c. Each member before entering upon his or her duties shall take
31 and subscribe an oath to perform the duties of his or her office
32 faithfully, impartially and justly to the best of his or her ability. A
33 record of such oaths shall be filed in the office of the Secretary of
34 State.

35 d. The State Treasurer shall be the president of the corporation, the
36 Deputy State Treasurer shall be the vice president of the corporation
37 and the State Comptroller shall be the treasurer of the corporation.
38 The president of the corporation shall appoint the secretary of the
39 corporation. The staff of the office of the State Treasurer shall also
40 serve as staff of the corporation. State officers, agencies, and
41 departments may render services to the corporation within their
42 respective functions, as requested by the corporation.

43 e. Each member and the treasurer of the corporation shall execute
44 a bond to be conditioned upon the faithful performance of the duties
45 of such member or treasurer in such form and amount as may be
46 prescribed by the State Comptroller. Such bonds shall be filed in the

1 office of the Secretary of State. At all times thereafter the members
2 and treasurer of the corporation shall maintain such bonds in full force
3 and effect. All costs of such bonds shall be borne by the corporation.

4 f. The members of the corporation shall serve without
5 compensation, but the corporation shall reimburse its members for
6 actual expenses necessarily incurred in the discharge of their duties.
7 Notwithstanding the provisions of any other laws, no officer or
8 employee of the State shall be deemed to have forfeited or shall forfeit
9 his or her office or employment or any benefits or emoluments thereof
10 by reason of his or her acceptance of the office of ex officio member
11 or officer of the corporation or his or her services therein.

12 g. Each ex officio member of the corporation may designate an
13 officer or employee of his or her department to represent him or her
14 at meetings of the corporation, and each such designee may lawfully
15 vote and otherwise act on behalf of the member for whom he or she
16 constitutes the designee. Any such designation shall be in writing
17 delivered to the secretary of the corporation and shall continue in
18 effect until revoked or amended by writing delivered to the secretary
19 of the corporation.

20 h. The corporation may be dissolved by act of the Legislature on
21 condition that the corporation has no debts or obligations outstanding
22 or that provision has been made for the payment or retirement of such
23 debts or obligations. Upon any such dissolution of the corporation, all
24 property, funds and assets thereof shall be vested in the State.

25 i. The corporation shall cause an audit of its books and accounts
26 to be made at least once in each year by certified public accountants
27 and cause a copy thereof to be filed with the Secretary of State and the
28 State Comptroller.

29 j. No member, officer, employee or agent of the corporation shall
30 have an interest, either directly or indirectly, in any business
31 organization engaged in any business, contract or transaction with the
32 corporation or in any contract of any other person engaged in any
33 business with the corporation, or in the purchase, sale, lease or
34 transfer of any property to or from the corporation.

35

36 4. As used in this act, unless the context clearly requires a different
37 meaning:

38 "Ancillary facility" means any revolving credit agreement,
39 agreement establishing a line of credit or letter of credit,
40 reimbursement agreement, interest rate exchange or similar agreement,
41 currency exchange agreement, interest rate floor or cap, options, puts
42 or calls to hedge payment, currency, rate, spread or similar exposure,
43 or similar agreements, float agreements, forward agreements,
44 insurance contract, surety bond, commitment to purchase or sell
45 securities, purchase or sale agreement, or commitments or other
46 contracts or agreements and other security agreements approved by

1 the corporation, including without limitation any arrangement referred
2 to in subsection j., k., l. or m. of section 6 of this act;

3 "Benefitted parties" means person, firms or corporations that enter
4 into ancillary facilities with the corporation according to the provisions
5 of this act;

6 "Code" means the United States Internal Revenue Code of 1986, as
7 amended, and any successor provision of law;

8 "Costs of issuance" means any item of expense directly or indirectly
9 payable or reimbursable by the corporation and related to the
10 authorization, sale or issuance of securities, including without
11 limitation underwriting fees, and fees and expenses of consultants and
12 fiduciaries;

13 "Corporation" means the Tobacco Settlement Financing
14 Corporation established by section 3 of this act;

15 "Encumbered tobacco revenues" means that portion of the TSRs
16 that is pledged by the corporation to the repayment of any securities
17 pursuant to the terms of the applicable corporation resolution, trust
18 agreement or trust indenture;

19 "Financing costs" means all capitalized interest, operating and debt
20 service reserves, costs of issuance, fees for credit and liquidity
21 enhancements and other costs as the corporation determines to be
22 desirable in issuing, securing and marketing the securities;

23 "Interest rate exchange or similar agreement" means a written
24 contract with a counterparty to provide for an exchange of payments
25 based upon fixed and/or variable interest rates;

26 "Master settlement agreement" means the master settlement
27 agreement, dated November 23, 1998, among the attorneys general of
28 46 states, including the State, the District of Columbia, the
29 Commonwealth of Puerto Rico, Guam, the United States Virgin
30 Islands, American Samoa and the Territory of the Northern Mariana
31 Islands, on the one hand, and certain tobacco manufacturers, on the
32 other hand;

33 "Net proceeds" means the amount of proceeds remaining following
34 each sale of securities which are not required by the corporation to
35 establish and fund reserve or escrow funds or termination or
36 settlement payments under ancillary facilities and to provide the
37 financing costs and other expenses and fees directly related to the
38 authorization and issuance of securities;

39 "Operating expenses" means the reasonable operating expenses of
40 the corporation, including without limitation the cost of preparation of
41 accounting and other reports, costs of maintenance of the ratings on
42 the securities, insurance premiums and costs of annual meetings or
43 other required activities of the corporation, and fees and expenses
44 incurred for consultants and fiduciaries;

45 "Outstanding" means, when used with respect to securities, all
46 securities other than securities that shall have been paid in full at

1 maturity or that may be deemed not outstanding pursuant to the
2 applicable corporation resolution, trust indenture or trust agreement
3 authorizing the issuance of such securities and when used with respect
4 to ancillary facilities, all ancillary facilities other than ancillary facilities
5 that have been paid in full or that may be deemed not outstanding
6 under such ancillary facilities;

7 "Qualifying statute" means "qualifying statute" as defined in the
8 master settlement agreement; currently P.L.1999, c.148 (C.52:4D-1 et
9 seq.);

10 "Residual interests" means: the unencumbered tobacco revenues;
11 the net proceeds not previously paid to the State; the income of the
12 corporation that is in excess of the corporation's requirements to pay
13 its operating expenses, debt service, sinking fund requirements, reserve
14 fund or escrow fund requirements and any other contractual
15 obligations to the owners of the securities or benefitted parties, or that
16 may be incurred in connection with the issuance of the securities or the
17 execution of ancillary facilities; and such contractual rights, if any, as
18 shall be provided to the State in accordance with the terms of any sale
19 agreements;

20 "Sale agreement" means any agreement authorized pursuant to
21 section 5 of this act in which the State provides for the sale of TSRs
22 to the corporation;

23 "Securities" means any securities, including without limitation any
24 bonds, notes and other evidence of indebtedness, issued by the
25 corporation pursuant to section 7 of this act;

26 "State" means the State of New Jersey;

27 "State representative" means the State acting by and through the
28 State Treasurer;

29 "State's tobacco receipts" means a) all tobacco settlement
30 payments that are received by the State that are required to be made,
31 pursuant to the terms of the master settlement agreement, by tobacco
32 manufacturers to the State, and b) the State's rights to receive such
33 tobacco settlement payments;

34 "TSRs" means the portion (which may include any or all) of the
35 State's tobacco receipts sold to the corporation pursuant to this act
36 and any sale agreement; and

37 "Unencumbered tobacco revenues" means that portion of the TSRs
38 that are not subject to the pledge of the applicable corporate
39 resolution, trust agreement or trust indenture by the corporation to the
40 repayment of any securities issued pursuant to the terms of such
41 applicable corporation resolution, trust agreement or trust indenture.

42

43 5. a. The State representative may sell to the corporation, and the
44 corporation may purchase, for cash or other consideration and in one
45 or more installments, all or a portion of the State's tobacco receipts
46 pursuant to the terms of one or more sale agreements. Any such sale

1 agreement shall provide, among other matters, that the purchase price
2 payable by the corporation to the State for such TSRs shall consist of
3 the net proceeds and the residual interests, if any. Any such sale shall
4 be pursuant to one or more sale agreements that may contain such
5 terms and conditions deemed appropriate by the State representative
6 to carry out and effectuate the purposes of this section, including
7 without limitation covenants binding the State in favor of the
8 corporation and its assignees, including without limitation the owners
9 of its securities and benefitted parties, such as a requirement that the
10 State enforce the provisions of the master settlement agreement that
11 require payment of the TSRs, a requirement that the State enforce the
12 provisions of the qualifying statute, a provision authorizing inclusion
13 of the State's pledge and agreement, as set forth in section 10 of this
14 act, in any agreement with owners of the securities or any benefitted
15 parties, and covenants with respect to the application and use of the
16 proceeds of the sale of the State's tobacco receipts to preserve the tax-
17 exemption of the interest on any securities, if issued as tax-exempt.
18 The State representative in any sale agreement may agree to, and the
19 corporation may provide for, the assignment of the corporation's right,
20 title and interest under such sale agreement for the benefit and security
21 of the owners of securities and benefitted parties.

22 b. Any sale of TSRs to the corporation pursuant to a sale
23 agreement shall be treated as a true sale and absolute transfer of the
24 property so transferred and not as a pledge or other security interest
25 for any borrowing. The characterization of such a sale as an absolute
26 transfer by the participants shall not be negated or adversely affected
27 by the fact that only a portion of the State's tobacco receipts is
28 transferred, nor by the acquisition or retention by the State of a
29 residual interest, nor by the participation by any State official as a
30 member or officer of the corporation, nor by the commingling of
31 amounts arising with respect to the TSRs with other amounts, nor by
32 whether the State is responsible for collecting the TSRs or otherwise
33 enforcing the master settlement agreement or retains legal title to such
34 portion of the State's tobacco receipts for the purposes of these
35 collection activities, nor by any characterization of the corporation or
36 its obligations for purposes of accounting, taxation or securities
37 regulation, nor by any other factor whatsoever.

38 c. On and after the effective date of each sale of TSRs, the State
39 shall have no right, title or interest in or to the TSRs sold, and the
40 TSRs so sold shall be property of the corporation and not of the State,
41 and shall be owned, received, held and disbursed by the corporation
42 and not the State. On or before the effective date of any such sale, the
43 State through the Attorney General shall notify the escrow agent under
44 the master settlement agreement that such TSRs have been sold to the
45 corporation and irrevocably instruct such escrow agent that,
46 subsequent to such date, such TSRs are to be paid directly to the

1 corporation or the trustee under the applicable corporation resolution,
2 trust agreement or trust indenture for the benefit of the owners of the
3 securities and benefitted parties until such securities and ancillary
4 facilities are no longer outstanding. Thereafter, any officer or agent
5 of the State who shall receive any such TSRs shall hold the same in
6 trust for the corporation or such trustee, as applicable, and shall
7 promptly remit the same to the corporation or such trustee, as
8 applicable.

9 d. The net proceeds and any earnings thereon shall never be
10 pledged to, nor made available for, payment of the securities or
11 ancillary facilities or any interest or redemption price thereon or any
12 other debt or obligation of the corporation. The net proceeds, any
13 earnings thereon and any residual interests shall be applied,
14 transferred, or paid to ²[or], and² upon the order of^{2,2} the State, as
15 directed by the State representative, and shall be used by the State for
16 any bona fide governmental purposes as determined by the State,
17 including without limitation for capital expenditures, debt service on
18 outstanding bonds of the State, working capital expenditures or
19 operating deficit needs of the State, endowments, or grants or aid to
20 political subdivisions, including without limitation school districts, of
21 the State. Pending such direction by the State representative, the
22 corporation shall invest such moneys such that funds will be available
23 at such times as the State representative shall deem necessary for the
24 expenditure thereof. The State is authorized and may arrange for the
25 availability of the net proceeds and residual interests from the
26 corporation on such terms and conditions as the State representative
27 deems appropriate and may include in the sale agreement provisions
28 for interfund transactions with respect thereto between the State and
29 the corporation. ¹Notwithstanding any provisions of this subsection,
30 the corporation shall not pay to the State during State fiscal year 2003
31 funds from any net proceeds, earnings thereon or residual interests in
32 excess of the amount appropriated from such funds pursuant to the
33 State annual appropriation act for State fiscal year 2003.¹

34

35 6. The corporation also shall have the power to:

36 a. sue and be sued;

37 b. have a seal and alter the same at its pleasure;

38 c. make and alter by-laws for its organization and internal
39 management and make rules and regulations governing the use of its
40 property and facilities;

41 d. make and execute contracts including without limitation sale
42 agreements, trust agreements, trust indentures, bond purchase
43 agreements, tax regulatory agreements, continuing disclosure
44 agreements, ancillary facilities and all other instruments necessary or
45 convenient for the exercise of its powers and functions, and commence
46 any action to protect or enforce any right conferred upon it by any

- 1 law, contract or other agreement;
- 2 e. engage the services of financial advisors and experts, placement
3 agents, underwriters, appraisers and such other advisors, consultants
4 and fiduciaries as may be necessary to effectuate the purposes of this
5 act;
- 6 f. pay its operating expenses and financing costs;
- 7 g. borrow money in its name and issue negotiable securities and
8 provide for the rights of the owners thereof;
- 9 h. procure insurance against any loss in connection with its
10 activities, properties and assets in such amount and from such insurers
11 as it deems desirable;
- 12 i. invest any funds or other moneys under its custody and control
13 in investments and securities that are legal investments under the laws
14 of the State for funds of the State and, notwithstanding any law to the
15 contrary, in any ancillary facility, in obligations the interest on which
16 is exempt from federal income taxation under the code and in shares
17 or participation interests in funds or trusts that invest solely in such
18 obligations;
- 19 j. as security for the payment of the principal of and interest on any
20 securities and for its obligations under any ancillary facility, pledge all
21 or any part of the TSRs or other assets;
- 22 k. procure insurance, letters of credit or other credit enhancement
23 with respect to any securities for the payment of tenders of securities,
24 or for the payment upon maturity of short-term securities;
- 25 l. (1) enter into any ancillary facility with any person under such
26 terms and conditions as the corporation, with the approval of the State
27 Treasurer, may determine;
- 28 (2) procure insurance, letters of credit or other credit enhancement
29 with respect to any ancillary facility;
- 30 (3) provide security for the payment or performance of its
31 obligations with respect to any ancillary facility from such sources and
32 with the same effect as is authorized by this act with respect to
33 security for securities; and
- 34 (4) modify, amend or replace any existing, or enter into a new,
35 ancillary facility; and
- 36 m. do any and all things necessary or convenient to carry out its
37 purposes and exercise the powers expressly given and granted in this
38 act.
- 39
- 40 7. a. (1) The corporation shall have power and is hereby
41 authorized from time to time to issue securities in such principal
42 amount or amounts as the corporation shall determine to be necessary
43 to provide sufficient funds for achieving its authorized purposes,
44 consisting of the purchase of all or a portion of the State's tobacco
45 receipts pursuant to section 5 of this act and the payment of or
46 provision for financing costs.

1 (2) The issuance of securities shall be authorized by a corporation
2 resolution. No corporation resolution authorizing the issuance of
3 securities (including securities issued to refund securities) pursuant to
4 this act shall be adopted or otherwise made effective without the
5 approval in writing of the State Treasurer. Securities (including
6 securities issued to refund securities) may be issued without obtaining
7 the consent of any department, division, commission, board, bureau or
8 agency of the State, other than the approval as required by this
9 subsection, and without any other proceedings or the occurrence of
10 any other conditions or other things other than those proceedings,
11 conditions or things which are specifically required by this act. Every
12 issue of securities shall be special revenue obligations payable from
13 and secured by a pledge of encumbered tobacco revenues and other
14 assets, including without limitation those proceeds of such securities
15 deposited in a reserve fund for the benefit of the owners of the
16 securities, earnings on funds of the corporation and such other funds
17 as may become available, upon such terms and conditions as approved
18 by the State Treasurer and as specified by the corporation in the
19 corporation resolution pursuant to which the securities are issued or
20 in a related trust agreement or trust indenture.

21 (3) The corporation shall issue securities to refund any securities
22 by the issuance of new securities, whenever it deems such refunding
23 expedient, whether the securities to be refunded have or have not
24 matured, and to issue securities partly to refund securities then
25 outstanding and partly for any of its other authorized purposes. The
26 refunding securities may be exchanged for the securities to be refunded
27 or sold and the proceeds applied to the purchase, redemption or
28 payment of such securities.

29 b. Each issue of securities shall be dated, shall bear interest (which,
30 under the code, may be includable in or excludable from the gross
31 income of the owners for federal income tax purposes) at such fixed
32 or variable rates, payable at or prior to maturity, and shall mature at
33 such time or times, as may be determined by the corporation and may
34 be made redeemable before maturity, at the option of the corporation,
35 at such price or prices and under such terms and conditions as may be
36 fixed by the corporation. The principal and interest of such securities
37 may be made payable in any lawful medium. The corporation shall
38 determine the form of the securities, either coupon, registered or
39 book-entry form, and the manner of execution of the securities and
40 shall fix the denomination or denominations of the securities and the
41 place or places of payment of principal and interest thereof, which may
42 be at any bank or trust company within or without the State. If any
43 officer whose signature or a facsimile thereof appears on any securities
44 or coupons shall cease to be such officer before the delivery of such
45 securities, such signature or facsimile shall nevertheless be valid and
46 sufficient for all purposes as if he or she had remained in office until

1 such delivery. The securities may be issued in coupon or in registered
2 form or both, as the corporation may determine, and provisions may
3 be made for the registration of any coupon securities as to principal
4 alone and as to both principal and interest and for the reconversion of
5 any securities registered as to both principal and interest into coupon
6 securities. The corporation may also provide for temporary securities
7 and for the replacement of any security that shall become mutilated or
8 shall be destroyed or lost.

9 c. The corporation with the approval of the State Treasurer may
10 sell such securities in such manner, either at public or private sale and
11 on either a competitive or negotiated basis. The proceeds of such
12 securities shall be disbursed for the purposes for which such securities
13 were issued as the act, the sale agreement and the corporation
14 resolution authorizing the issuance of such securities or the related
15 trust agreement or trust indenture may provide.

16 d. Any pledge made by the corporation shall be valid and binding
17 at the time the pledge is made. The revenues, reserves or earnings so
18 pledged or earnings on the investment thereof shall immediately be
19 subject to the lien of such pledge without any physical delivery thereof
20 or further act and the lien of any such pledge shall be valid and binding
21 as against all parties having claims of any kind in tort, contract or
22 otherwise against the corporation, irrespective of whether such parties
23 have notice thereof. Notwithstanding any other provision of law to
24 the contrary, neither the corporation resolution nor any trust
25 agreement or trust indenture or other instrument by which a pledge is
26 created or by which the corporation's interest in encumbered tobacco
27 revenues, reserves or earnings thereon is assigned need be filed or
28 recorded in any public records in order to protect the pledge thereof
29 or perfect the lien thereof as against third parties, except that a copy
30 thereof shall be filed in the records of the corporation.

31 e. Notwithstanding the provisions of any other law to the contrary,
32 any securities issued pursuant to this act shall be fully negotiable
33 within the meaning and for all purposes of Title 12A of the New Jersey
34 Statutes, and each owner of such a security or other obligation, or of
35 any coupon appurtenant thereto, by accepting the security or coupon
36 shall be conclusively deemed to have agreed that the security or
37 coupon is and shall be fully negotiable within the meaning and for all
38 purposes of Title 12A.

39 f. In the discretion of the corporation, any securities and any
40 ancillary facilities may be secured by a trust agreement or trust
41 indenture by and between the corporation and the trustee thereunder,
42 which may be any trust company or bank having the powers of a trust
43 company, whether located within or without the State. Such trust
44 agreement or trust indenture or corporation resolution providing for
45 the issuance of such securities may provide for the creation and
46 maintenance of such reserves as the corporation shall determine to be

1 proper and may include covenants setting forth the duties of the
2 corporation in relation to the securities, the ancillary facilities, the
3 income to the corporation, the sale agreement, the encumbered
4 tobacco revenues and residual interests. Such trust agreement or trust
5 indenture or corporation resolution may contain provisions respecting
6 the custody, safeguarding and application of all moneys and securities
7 and may contain such provisions for protecting and enforcing the
8 rights and remedies (pursuant thereto and to the sale agreement) of the
9 owners of the securities and benefitted parties as may be reasonable
10 and proper and not in violation of law. It shall be lawful for any bank
11 or trust company incorporated under the laws of the State which may
12 act as depository of the proceeds of securities or of any other funds or
13 obligations received on behalf of the corporation to furnish such
14 indemnifying bonds or to pledge such obligations as may be required
15 by the corporation. Any such trust agreement or trust indenture or
16 corporation resolution may contain such other provisions as the
17 corporation may deem reasonable and proper for priorities and
18 subordination among the owners of the securities and benefitted
19 parties.

20 g. The corporation may enter into, amend or terminate, as it
21 determines to be necessary or appropriate, any ancillary facilities (1)
22 to facilitate the issuance, sale, resale, purchase, repurchase or payment
23 of securities or the making or performance of swap contracts,
24 including without limitation bond insurance, letters of credit and
25 liquidity facilities or (2) to attempt to hedge risk or achieve a desirable
26 effective interest rate or cash flow. The determination of the
27 corporation that an ancillary facility or the amendment or termination
28 thereof is necessary or appropriate as aforesaid shall be conclusive.
29 Such ancillary facility shall be made upon the terms and conditions
30 established by the corporation, including without limitation provisions
31 as to security, default, termination, payment, remedy and consent to
32 service of process.

33 h. The corporation may enter into, amend or terminate any
34 ancillary facility as it determines to be necessary or appropriate to
35 place the obligations or investments of the corporation, as represented
36 by the securities or the investment of their proceeds, in whole or in
37 part, on the interest rate, cash flow or other basis desired by the
38 corporation, which facility may include without limitation contracts
39 commonly known as interest rate swap agreements, and futures or
40 contracts providing for payments based on levels of, or changes in,
41 interest rates. These contracts or arrangements may be entered into
42 by the corporation in connection with, or incidental to, entering into,
43 or maintaining any (1) agreement which secures securities of the
44 corporation or (2) investment, or contract providing for investments,
45 of reserves or similar facility guaranteeing an investment rate for a
46 period of years. The determination by the corporation that an ancillary

1 facility or the amendment or termination thereof is necessary or
2 appropriate as aforesaid shall be conclusive. Any ancillary facility may
3 contain such payment, security, default, remedy, termination
4 provisions and payments and other terms and conditions as determined
5 by the corporation, after giving due consideration to the
6 creditworthiness of the counterparty or other obligated party,
7 including without limitation any rating by any nationally recognized
8 rating agency, and any other criteria as may be appropriate.

9 i. Securities and ancillary facilities may contain a recital that they
10 are issued pursuant to this act, which recital shall be conclusive
11 evidence of their validity, the validity of any ancillary facility and the
12 regularity of the proceedings relating thereto.

13 j. Neither the members of the corporation nor any other person
14 executing the securities or an ancillary facility shall be subject to any
15 personal liability or accountability by reason of the issuance or
16 execution and delivery thereof.

17

18 8. The issuance of securities and the execution of any ancillary
19 facility under the provisions of this act shall not directly, or indirectly
20 or contingently obligate the State or any political subdivision thereof
21 to pay any amounts to the corporation or owner of securities or
22 benefitted parties or levy or pledge any form of taxation whatsoever
23 therefor. The securities and any ancillary facility shall not be a debt or
24 liability of the State or any agency or instrumentality thereof (other
25 than the corporation as set forth in this act), either legal, moral or
26 otherwise, and nothing contained in this act shall be construed to
27 authorize the corporation to incur any indebtedness on behalf of or in
28 any way to obligate the State or any political subdivision thereof, and
29 the securities and any ancillary facility shall contain on the face thereof
30 or other prominent place thereon in bold typeface a statement to the
31 foregoing effect. No appropriation of any moneys by the State to the
32 corporation is authorized in this act.

33

34 9. a. It is hereby determined that the creation of the corporation
35 and the carrying out of its authorized purposes is in all respects a
36 public and governmental purpose for the benefit of the people of the
37 State and for the improvement of their health, safety, welfare, comfort
38 and security, and that said purposes are public purposes and that the
39 corporation will be performing an essential governmental function in
40 the exercise of the powers conferred upon it by this act.

41 b. The property of the corporation and its income and operations
42 shall be exempt from taxation.

43 c. The securities and the interest thereon and the income derived
44 from all funds, revenues, incomes and other moneys received for or to
45 be received by the corporation shall be exempt from all taxes levied
46 pursuant to the provisions of Title 54 of the Revised Statutes or Title

1 54A of the New Jersey Statutes, except for transfer inheritance and
2 estate taxes levied pursuant to Subtitle 5 of Title 54 of the Revised
3 Statutes.

4 d. In the case of any securities, the interest on which is intended to
5 be exempt from federal income tax, the corporation shall prescribe
6 restrictions on the use of the proceeds thereof and related matters as
7 are necessary to assure such exemption, and the recipients of such
8 proceeds shall be bound thereby to the extent such restrictions shall be
9 made applicable to them. Any such recipient, including without
10 limitation the State or any political subdivision of the State, is
11 authorized to execute a tax regulatory agreement with the corporation
12 (and, as to any such political subdivision, the State) and the execution
13 of such an agreement may be treated as a condition to receiving any
14 such proceeds.

15
16 10. a. The State hereby pledges and agrees with the corporation,
17 and the owners of the securities and benefitted parties, that until all
18 securities and ancillary facilities, together with the interest thereon and
19 all costs and expenses in connection with any action or proceedings by
20 or on behalf of owners of securities or benefitted parties, are fully paid
21 and discharged the State will (1) irrevocably direct through the
22 Attorney General the escrow agent under the master settlement
23 agreement to transfer directly to the corporation or its assignee the
24 TSRs, (2) enforce the corporation's rights to receive the TSRs to the
25 full extent permitted by the terms of the master settlement agreement,
26 (3) not amend the master settlement agreement in any manner that
27 would materially impair the rights of the owners of the securities or of
28 the benefitted parties, (4) not limit or alter the rights of the
29 corporation to fulfill the terms of its agreements with such owners or
30 benefitted parties, (5) not in any way impair the rights and remedies of
31 such owners or benefitted parties or the security for such securities or
32 ancillary facilities (provided, that nothing herein shall be construed to
33 preclude the State's regulation of smoking and taxation and regulation
34 of the sale of cigarettes or the like), (6) not fail to enforce the
35 qualifying statute, and (7) not amend, supersede or repeal the
36 qualifying statute in any way that would materially adversely affect the
37 amount of any payment to, or materially impair the rights of, the
38 corporation, such owners of the securities or the benefitted parties.
39 The State representative is authorized and directed to include this
40 pledge and agreement in sale agreements and the corporation is
41 authorized and directed to include this pledge and agreement in any
42 contract with the owners of the securities and benefitted parties.

43 b. Prior to the date that is one year and one day after the
44 corporation no longer has any securities or ancillary facilities
45 outstanding, the corporation shall have no authority to file a voluntary
46 petition under chapter 9 of the federal bankruptcy code or such

1 corresponding chapter or sections as may, from time to time, be in
2 effect, and neither any public officer nor any organization, entity or
3 other person shall authorize the corporation to be or become a debtor
4 under chapter 9 or any successor or corresponding chapter or sections
5 during such period. The State hereby covenants with the owners of
6 the securities and benefitted parties that the State will not limit or alter
7 the denial of the corporation under this subsection during the period
8 referred to in the preceding sentence. The corporation is authorized
9 and directed to include this covenant as an agreement of the State in
10 any contract with the owners of the securities and benefitted parties.

11

12 11. Notwithstanding any restriction contained in any other law,
13 rule, regulation or order to the contrary, the State and all political
14 subdivisions of the State, their officers, boards, commissioners,
15 departments or other agencies, all banks, bankers, trust companies,
16 savings banks and institutions, building and loan associations, saving
17 and loan associations, investment companies and other persons
18 carrying on a banking or investment business, and all executors,
19 administrators, guardians, trustees and other fiduciaries, and all other
20 persons whatsoever who now are or may hereafter be authorized to
21 invest in bonds or other obligations of the State, may properly and
22 legally invest any sinking funds, moneys or other funds, including
23 capital, belonging to them or within their control, in any securities; and
24 said securities are hereby made securities which may properly and
25 legally be deposited with, and received by, any State municipal officers
26 or agency of the State, for any purpose for which the deposit of bonds
27 or other obligations of the State is now, or may hereafter be,
28 authorized by law.

29

30 12. Neither any member of the corporation nor any officer,
31 employee or agent of the corporation, while acting within the scope of
32 his or her authority, shall be subject to any personal liability resulting
33 from exercising or carrying out of any of the corporation's purposes
34 or powers.

35

36 13. The corporation may adopt any rule and regulation to
37 effectuate the purposes of this act and, if it does so, shall apply the
38 procedures of the "Administrative Procedure Act," P.L.1968, c.410
39 (C.52:14B-1 et seq.), with respect thereto.

40

41 14. This act and all powers granted hereby shall be liberally
42 construed to effectuate its intent and their purposes, without implied
43 limitations thereon. This act shall constitute full and complete
44 authority for all things herein contemplated to be done. All rights and
45 powers herein granted shall be cumulative with those derived from
46 other sources and shall not, except as expressly stated herein, be

1 construed in limitation thereof. Insofar as the provisions of this act are
2 inconsistent with the provisions of any other act, general or special,
3 the provisions of this act shall be controlling. If any clause, sentence,
4 paragraph, section or part of this act be adjudged by any court of
5 competent jurisdiction to be invalid, such judgment shall not affect,
6 impair or invalidate the remainder hereof but shall be applied in its
7 operation to the clause, sentence, paragraph, section or part hereof
8 directly involved in the controversy in which such judgment shall have
9 been rendered.

10

11 15. This act shall take effect immediately.

12

13

14

15

16 The "Tobacco Settlement Financing Corporation Act."

ASSEMBLY, No. 2502

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JUNE 6, 2002

Sponsored by:

Assemblyman JOSEPH V. DORIA, JR.

District 31 (Hudson)

SYNOPSIS

The "Tobacco Settlement Financing Corporation Act."

CURRENT VERSION OF TEXT

As introduced.



A2502 DORIA

2

1 AN ACT creating and providing for the purposes and powers of the
2 Tobacco Settlement Financing Corporation, supplementing Title 52
3 of the Revised Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. This act shall be known and may be cited as the "Tobacco
9 Settlement Financing Corporation Act."

10

11 2. The purpose of this act is to authorize, create and establish a
12 corporation empowered to acquire from the State all or a portion of
13 the State's tobacco receipts; to authorize the sale by the State of all or
14 a portion of the State's tobacco receipts to the corporation; to
15 authorize the transfer to and the receipt by the corporation of such
16 tobacco receipts; to authorize the corporation to issue securities of the
17 corporation for the purposes authorized in this act, payable solely from
18 and secured solely by such portion of the State's tobacco receipts as
19 the corporation may designate and pledge to secure the securities,
20 together with the investment income thereon and any reserve funds
21 created by the corporation from any portion of the proceeds of such
22 securities; to authorize the corporation to hold and invest such portion
23 of the net proceeds of the sale of the securities pending direction by
24 the State and such portion of the State's tobacco receipts sold to the
25 corporation which are not pledged to secure securities of the
26 corporation; and to authorize the corporation to manage such portion
27 of the net proceeds of the sale of the securities pending direction by
28 the State and all or a portion of the State's tobacco receipts sold to the
29 corporation for the purposes and in the manner authorized in this act.

30

31 3. a. There is hereby established in, but not of, the Department of
32 Treasury a public body corporate and politic, with corporate
33 succession, to be known as the "Tobacco Settlement Financing
34 Corporation." The corporation is hereby constituted as an
35 instrumentality of the State exercising public and essential
36 governmental functions, and the exercise by the corporation of the
37 powers conferred by this act shall be deemed and held to be an
38 essential governmental function of the State. Notwithstanding the
39 existence of common management, the corporation shall be treated and
40 accounted for as a separate legal entity with its separate corporate
41 purposes as set forth in this act. The assets, liabilities and funds of the
42 corporation shall be neither consolidated nor commingled with those
43 of the State or of any entity capable of being a debtor in a case
44 commenced under the federal bankruptcy code.

45

46 b. The corporation shall have and be governed by three members
who shall be the Commissioner of Health and Senior Services of the

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1 State and the State Treasurer, who shall be members ex officio, and
2 one public member appointed by the Governor (who shall have
3 knowledge in the area of health care or the provision of health care)
4 who shall serve at the pleasure of the Governor; provided however,
5 the Governor may appoint the head of a principal department of the
6 State to replace the Commissioner of Health and Senior Services of
7 the State as a member. The State Treasurer shall serve as the
8 chairperson of the corporation. The corporation shall elect from
9 among its members a vice chairman. The powers of the corporation
10 shall be vested in the members thereof in office from time to time and
11 a majority of the total authorized membership of the corporation shall
12 constitute a quorum at any meeting thereof. Action may be taken and
13 motions and resolutions adopted by the corporation at any meeting
14 thereof by the affirmative vote of a majority of the members present.
15 No vacancy in the membership of the corporation shall impair the right
16 of a quorum of the members to exercise all the powers and perform all
17 the duties of the corporation.

18 c. Each member before entering upon his or her duties shall take
19 and subscribe an oath to perform the duties of his or her office
20 faithfully, impartially and justly to the best of his or her ability. A
21 record of such oaths shall be filed in the office of the Secretary of
22 State.

23 d. The State Treasurer shall be the president of the corporation, the
24 Deputy State Treasurer shall be the vice president of the corporation
25 and the State Comptroller shall be the treasurer of the corporation.
26 The president of the corporation shall appoint the secretary of the
27 corporation. The staff of the office of the State Treasurer shall also
28 serve as staff of the corporation. State officers, agencies, and
29 departments may render services to the corporation within their
30 respective functions, as requested by the corporation.

31 e. Each member and the treasurer of the corporation shall execute
32 a bond to be conditioned upon the faithful performance of the duties
33 of such member or treasurer in such form and amount as may be
34 prescribed by the State Comptroller. Such bonds shall be filed in the
35 office of the Secretary of State. At all times thereafter the members
36 and treasurer of the corporation shall maintain such bonds in full force
37 and effect. All costs of such bonds shall be borne by the corporation.

38 f. The members of the corporation shall serve without
39 compensation, but the corporation shall reimburse its members for
40 actual expenses necessarily incurred in the discharge of their duties.
41 Notwithstanding the provisions of any other laws, no officer or
42 employee of the State shall be deemed to have forfeited or shall forfeit
43 his or her office or employment or any benefits or emoluments thereof
44 by reason of his or her acceptance of the office of ex officio member
45 or officer of the corporation or his or her services therein.

46 g. Each ex officio member of the corporation may designate an

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1 officer or employee of his or her department to represent him or her
2 at meetings of the corporation, and each such designee may lawfully
3 vote and otherwise act on behalf of the member for whom he or she
4 constitutes the designee. Any such designation shall be in writing
5 delivered to the secretary of the corporation and shall continue in
6 effect until revoked or amended by writing delivered to the secretary
7 of the corporation.

8 h. The corporation may be dissolved by act of the Legislature on
9 condition that the corporation has no debts or obligations outstanding
10 or that provision has been made for the payment or retirement of such
11 debts or obligations. Upon any such dissolution of the corporation, all
12 property, funds and assets thereof shall be vested in the State.

13 i. The corporation shall cause an audit of its books and accounts
14 to be made at least once in each year by certified public accountants
15 and cause a copy thereof to be filed with the Secretary of State and the
16 State Comptroller.

17 j. No member, officer, employee or agent of the corporation shall
18 have an interest, either directly or indirectly, in any business
19 organization engaged in any business, contract or transaction with the
20 corporation or in any contract of any other person engaged in any
21 business with the corporation, or in the purchase, sale, lease or
22 transfer of any property to or from the corporation.

23

24 4. As used in this act, unless the context clearly requires a different
25 meaning:

26 "Ancillary facility" means any revolving credit agreement,
27 agreement establishing a line of credit or letter of credit,
28 reimbursement agreement, interest rate exchange or similar agreement,
29 currency exchange agreement, interest rate floor or cap, options, puts
30 or calls to hedge payment, currency, rate, spread or similar exposure,
31 or similar agreements, float agreements, forward agreements,
32 insurance contract, surety bond, commitment to purchase or sell
33 securities, purchase or sale agreement, or commitments or other
34 contracts or agreements and other security agreements approved by
35 the corporation, including without limitation any arrangement referred
36 to in subsection j., k., l. or m. of section 6 of this act;

37 "Benefitted parties" means person, firms or corporations that enter
38 into ancillary facilities with the corporation according to the provisions
39 of this act;

40 "Code" means the United States Internal Revenue Code of 1986, as
41 amended, and any successor provision of law;

42 "Costs of issuance" means any item of expense directly or indirectly
43 payable or reimbursable by the corporation and related to the
44 authorization, sale or issuance of securities, including without
45 limitation underwriting fees, and fees and expenses of consultants and
46 fiduciaries;

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1 "Corporation" means the Tobacco Settlement Financing
2 Corporation established by section 3 of this act;

3 "Encumbered tobacco revenues" means that portion of the TSRs
4 that is pledged by the corporation to the repayment of any securities
5 pursuant to the terms of the applicable corporation resolution, trust
6 agreement or trust indenture;

7 "Financing costs" means all capitalized interest, operating and debt
8 service reserves, costs of issuance, fees for credit and liquidity
9 enhancements and other costs as the corporation determines to be
10 desirable in issuing, securing and marketing the securities;

11 "Interest rate exchange or similar agreement" means a written
12 contract with a counterparty to provide for an exchange of payments
13 based upon fixed and/or variable interest rates;

14 "Master settlement agreement" means the master settlement
15 agreement, dated November 23, 1998, among the attorneys general of
16 46 states, including the State, the District of Columbia, the
17 Commonwealth of Puerto Rico, Guam, the United States Virgin
18 Islands, American Samoa and the Territory of the Northern Mariana
19 Islands, on the one hand, and certain tobacco manufacturers, on the
20 other hand;

21 "Net proceeds" means the amount of proceeds remaining following
22 each sale of securities which are not required by the corporation to
23 establish and fund reserve or escrow funds or termination or
24 settlement payments under ancillary facilities and to provide the
25 financing costs and other expenses and fees directly related to the
26 authorization and issuance of securities;

27 "Operating expenses" means the reasonable operating expenses of
28 the corporation, including without limitation the cost of preparation of
29 accounting and other reports, costs of maintenance of the ratings on
30 the securities, insurance premiums and costs of annual meetings or
31 other required activities of the corporation, and fees and expenses
32 incurred for consultants and fiduciaries;

33 "Outstanding" means, when used with respect to securities, all
34 securities other than securities that shall have been paid in full at
35 maturity or that may be deemed not outstanding pursuant to the
36 applicable corporation resolution, trust indenture or trust agreement
37 authorizing the issuance of such securities and when used with respect
38 to ancillary facilities, all ancillary facilities other than ancillary facilities
39 that have been paid in full or that may be deemed not outstanding
40 under such ancillary facilities;

41 "Qualifying statute" means "qualifying statute" as defined in the
42 master settlement agreement; currently P.L.1999, c.148 (C.52:4D-1 et
43 seq.);

44 "Residual interests" means: the unencumbered tobacco revenues;
45 the net proceeds not previously paid to the State; the income of the
46 corporation that is in excess of the corporation's requirements to pay

1 its operating expenses, debt service, sinking fund requirements, reserve
2 fund or escrow fund requirements and any other contractual
3 obligations to the owners of the securities or benefitted parties, or that
4 may be incurred in connection with the issuance of the securities or the
5 execution of ancillary facilities; and such contractual rights, if any, as
6 shall be provided to the State in accordance with the terms of any sale
7 agreements;

8 "Sale agreement" means any agreement authorized pursuant to
9 section 5 of this act in which the State provides for the sale of TSRs
10 to the corporation;

11 "Securities" means any securities, including without limitation any
12 bonds, notes and other evidence of indebtedness, issued by the
13 corporation pursuant to section 7 of this act;

14 "State" means the State of New Jersey;

15 "State representative" means the State acting by and through the
16 State Treasurer;

17 "State's tobacco receipts" means a) all tobacco settlement
18 payments that are received by the State that are required to be made,
19 pursuant to the terms of the master settlement agreement, by tobacco
20 manufacturers to the State, and b) the State's rights to receive such
21 tobacco settlement payments;

22 "TSRs" means the portion (which may include any or all) of the
23 State's tobacco receipts sold to the corporation pursuant to this act
24 and any sale agreement; and

25 "Unencumbered tobacco revenues" means that portion of the TSRs
26 that are not subject to the pledge of the applicable corporate
27 resolution, trust agreement or trust indenture by the corporation to the
28 repayment of any securities issued pursuant to the terms of such
29 applicable corporation resolution, trust agreement or trust indenture.
30

31 5. a. The State representative may sell to the corporation, and the
32 corporation may purchase, for cash or other consideration and in one
33 or more installments, all or a portion of the State's tobacco receipts
34 pursuant to the terms of one or more sale agreements. Any such sale
35 agreement shall provide, among other matters, that the purchase price
36 payable by the corporation to the State for such TSRs shall consist of
37 the net proceeds and the residual interests, if any. Any such sale shall
38 be pursuant to one or more sale agreements that may contain such
39 terms and conditions deemed appropriate by the State representative
40 to carry out and effectuate the purposes of this section, including
41 without limitation covenants binding the State in favor of the
42 corporation and its assignees, including without limitation the owners
43 of its securities and benefitted parties, such as a requirement that the
44 State enforce the provisions of the master settlement agreement that
45 require payment of the TSRs, a requirement that the State enforce the
46 provisions of the qualifying statute, a provision authorizing inclusion

1 of the State's pledge and agreement, as set forth in section 10 of this
2 act, in any agreement with owners of the securities or any benefitted
3 parties, and covenants with respect to the application and use of the
4 proceeds of the sale of the State's tobacco receipts to preserve the tax-
5 exemption of the interest on any securities, if issued as tax-exempt.
6 The State representative in any sale agreement may agree to, and the
7 corporation may provide for, the assignment of the corporation's right,
8 title and interest under such sale agreement for the benefit and security
9 of the owners of securities and benefitted parties.

10 b. Any sale of TSRs to the corporation pursuant to a sale
11 agreement shall be treated as a true sale and absolute transfer of the
12 property so transferred and not as a pledge or other security interest
13 for any borrowing. The characterization of such a sale as an absolute
14 transfer by the participants shall not be negated or adversely affected
15 by the fact that only a portion of the State's tobacco receipts is
16 transferred, nor by the acquisition or retention by the State of a
17 residual interest, nor by the participation by any State official as a
18 member or officer of the corporation, nor by the commingling of
19 amounts arising with respect to the TSRs with other amounts, nor by
20 whether the State is responsible for collecting the TSRs or otherwise
21 enforcing the master settlement agreement or retains legal title to such
22 portion of the State's tobacco receipts for the purposes of these
23 collection activities, nor by any characterization of the corporation or
24 its obligations for purposes of accounting, taxation or securities
25 regulation, nor by any other factor whatsoever.

26 c. On and after the effective date of each sale of TSRs, the State
27 shall have no right, title or interest in or to the TSRs sold, and the
28 TSRs so sold shall be property of the corporation and not of the State,
29 and shall be owned, received, held and disbursed by the corporation
30 and not the State. On or before the effective date of any such sale, the
31 State through the Attorney General shall notify the escrow agent under
32 the master settlement agreement that such TSRs have been sold to the
33 corporation and irrevocably instruct such escrow agent that,
34 subsequent to such date, such TSRs are to be paid directly to the
35 corporation or the trustee under the applicable corporation resolution,
36 trust agreement or trust indenture for the benefit of the owners of the
37 securities and benefitted parties until such securities and ancillary
38 facilities are no longer outstanding. Thereafter, any officer or agent
39 of the State who shall receive any such TSRs shall hold the same in
40 trust for the corporation or such trustee, as applicable, and shall
41 promptly remit the same to the corporation or such trustee, as
42 applicable.

43 d. The net proceeds and any earnings thereon shall never be
44 pledged to, nor made available for, payment of the securities or
45 ancillary facilities or any interest or redemption price thereon or any
46 other debt or obligation of the corporation. The net proceeds, any

1 earnings thereon and any residual interests shall be applied,
2 transferred, or paid to or upon the order of the State, as directed by
3 the State representative, and shall be used by the State for any bona
4 fide governmental purposes as determined by the State, including
5 without limitation for capital expenditures, debt service on outstanding
6 bonds of the State, working capital expenditures or operating deficit
7 needs of the State, endowments, or grants or aid to political
8 subdivisions, including without limitation school districts, of the State.
9 Pending such direction by the State representative, the corporation
10 shall invest such moneys such that funds will be available at such times
11 as the State representative shall deem necessary for the expenditure
12 thereof. The State is authorized and may arrange for the availability
13 of the net proceeds and residual interests from the corporation on such
14 terms and conditions as the State representative deems appropriate and
15 may include in the sale agreement provisions for interfund transactions
16 with respect thereto between the State and the corporation.

17

18 6. The corporation also shall have the power to:

19 a. sue and be sued;

20 b. have a seal and alter the same at its pleasure;

21 c. make and alter by-laws for its organization and internal
22 management and make rules and regulations governing the use of its
23 property and facilities;

24 d. make and execute contracts including without limitation sale
25 agreements, trust agreements, trust indentures, bond purchase
26 agreements, tax regulatory agreements, continuing disclosure
27 agreements, ancillary facilities and all other instruments necessary or
28 convenient for the exercise of its powers and functions, and commence
29 any action to protect or enforce any right conferred upon it by any
30 law, contract or other agreement;

31 e. engage the services of financial advisors and experts, placement
32 agents, underwriters, appraisers and such other advisors, consultants
33 and fiduciaries as may be necessary to effectuate the purposes of this
34 act;

35 f. pay its operating expenses and financing costs;

36 g. borrow money in its name and issue negotiable securities and
37 provide for the rights of the owners thereof;

38 h. procure insurance against any loss in connection with its
39 activities, properties and assets in such amount and from such insurers
40 as it deems desirable;

41 i. invest any funds or other moneys under its custody and control
42 in investments and securities that are legal investments under the laws
43 of the State for funds of the State and, notwithstanding any law to the
44 contrary, in any ancillary facility, in obligations the interest on which
45 is exempt from federal income taxation under the code and in shares
46 or participation interests in funds or trusts that invest solely in such

1 obligations;

2 j. as security for the payment of the principal of and interest on any
3 securities and for its obligations under any ancillary facility, pledge all
4 or any part of the TSRs or other assets;

5 k. procure insurance, letters of credit or other credit enhancement
6 with respect to any securities for the payment of tenders of securities,
7 or for the payment upon maturity of short-term securities;

8 l. (1) enter into any ancillary facility with any person under such
9 terms and conditions as the corporation, with the approval of the State
10 Treasurer, may determine;

11 (2) procure insurance, letters of credit or other credit enhancement
12 with respect to any ancillary facility;

13 (3) provide security for the payment or performance of its
14 obligations with respect to any ancillary facility from such sources and
15 with the same effect as is authorized by this act with respect to
16 security for securities; and

17 (4) modify, amend or replace any existing, or enter into a new,
18 ancillary facility; and

19 m. do any and all things necessary or convenient to carry out its
20 purposes and exercise the powers expressly given and granted in this
21 act.

22

23 7. a. (1) The corporation shall have power and is hereby
24 authorized from time to time to issue securities in such principal
25 amount or amounts as the corporation shall determine to be necessary
26 to provide sufficient funds for achieving its authorized purposes,
27 consisting of the purchase of all or a portion of the State's tobacco
28 receipts pursuant to section 5 of this act and the payment of or
29 provision for financing costs.

30 (2) The issuance of securities shall be authorized by a corporation
31 resolution. No corporation resolution authorizing the issuance of
32 securities (including securities issued to refund securities) pursuant to
33 this act shall be adopted or otherwise made effective without the
34 approval in writing of the State Treasurer. Securities (including
35 securities issued to refund securities) may be issued without obtaining
36 the consent of any department, division, commission, board, bureau or
37 agency of the State, other than the approval as required by this
38 subsection, and without any other proceedings or the occurrence of
39 any other conditions or other things other than those proceedings,
40 conditions or things which are specifically required by this act. Every
41 issue of securities shall be special revenue obligations payable from
42 and secured by a pledge of encumbered tobacco revenues and other
43 assets, including without limitation those proceeds of such securities
44 deposited in a reserve fund for the benefit of the owners of the
45 securities, earnings on funds of the corporation and such other funds
46 as may become available, upon such terms and conditions as approved

1 by the State Treasurer and as specified by the corporation in the
2 corporation resolution pursuant to which the securities are issued or
3 in a related trust agreement or trust indenture.

4 (3) The corporation shall issue securities to refund any securities
5 by the issuance of new securities, whenever it deems such refunding
6 expedient, whether the securities to be refunded have or have not
7 matured, and to issue securities partly to refund securities then
8 outstanding and partly for any of its other authorized purposes. The
9 refunding securities may be exchanged for the securities to be refunded
10 or sold and the proceeds applied to the purchase, redemption or
11 payment of such securities.

12 b. Each issue of securities shall be dated, shall bear interest (which,
13 under the code, may be includable in or excludable from the gross
14 income of the owners for federal income tax purposes) at such fixed
15 or variable rates, payable at or prior to maturity, and shall mature at
16 such time or times, as may be determined by the corporation and may
17 be made redeemable before maturity, at the option of the corporation,
18 at such price or prices and under such terms and conditions as may be
19 fixed by the corporation. The principal and interest of such securities
20 may be made payable in any lawful medium. The corporation shall
21 determine the form of the securities, either coupon, registered or
22 book-entry form, and the manner of execution of the securities and
23 shall fix the denomination or denominations of the securities and the
24 place or places of payment of principal and interest thereof, which may
25 be at any bank or trust company within or without the State. If any
26 officer whose signature or a facsimile thereof appears on any securities
27 or coupons shall cease to be such officer before the delivery of such
28 securities, such signature or facsimile shall nevertheless be valid and
29 sufficient for all purposes as if he or she had remained in office until
30 such delivery. The securities may be issued in coupon or in registered
31 form or both, as the corporation may determine, and provisions may
32 be made for the registration of any coupon securities as to principal
33 alone and as to both principal and interest and for the reconversion of
34 any securities registered as to both principal and interest into coupon
35 securities. The corporation may also provide for temporary securities
36 and for the replacement of any security that shall become mutilated or
37 shall be destroyed or lost.

38 c. The corporation with the approval of the State Treasurer may
39 sell such securities in such manner, either at public or private sale and
40 on either a competitive or negotiated basis. The proceeds of such
41 securities shall be disbursed for the purposes for which such securities
42 were issued as the act, the sale agreement and the corporation
43 resolution authorizing the issuance of such securities or the related
44 trust agreement or trust indenture may provide.

45 d. Any pledge made by the corporation shall be valid and binding
46 at the time the pledge is made. The revenues, reserves or earnings so

1 pledged or earnings on the investment thereof shall immediately be
2 subject to the lien of such pledge without any physical delivery thereof
3 or further act and the lien of any such pledge shall be valid and binding
4 as against all parties having claims of any kind in tort, contract or
5 otherwise against the corporation, irrespective of whether such parties
6 have notice thereof. Notwithstanding any other provision of law to
7 the contrary, neither the corporation resolution nor any trust
8 agreement or trust indenture or other instrument by which a pledge is
9 created or by which the corporation's interest in encumbered tobacco
10 revenues, reserves or earnings thereon is assigned need be filed or
11 recorded in any public records in order to protect the pledge thereof
12 or perfect the lien thereof as against third parties, except that a copy
13 thereof shall be filed in the records of the corporation.

14 e. Notwithstanding the provisions of any other law to the contrary,
15 any securities issued pursuant to this act shall be fully negotiable
16 within the meaning and for all purposes of Title 12A of the New Jersey
17 Statutes, and each owner of such a security or other obligation, or of
18 any coupon appurtenant thereto, by accepting the security or coupon
19 shall be conclusively deemed to have agreed that the security or
20 coupon is and shall be fully negotiable within the meaning and for all
21 purposes of Title 12A.

22 f. In the discretion of the corporation, any securities and any
23 ancillary facilities may be secured by a trust agreement or trust
24 indenture by and between the corporation and the trustee thereunder,
25 which may be any trust company or bank having the powers of a trust
26 company, whether located within or without the State. Such trust
27 agreement or trust indenture or corporation resolution providing for
28 the issuance of such securities may provide for the creation and
29 maintenance of such reserves as the corporation shall determine to be
30 proper and may include covenants setting forth the duties of the
31 corporation in relation to the securities, the ancillary facilities, the
32 income to the corporation, the sale agreement, the encumbered
33 tobacco revenues and residual interests. Such trust agreement or trust
34 indenture or corporation resolution may contain provisions respecting
35 the custody, safeguarding and application of all moneys and securities
36 and may contain such provisions for protecting and enforcing the
37 rights and remedies (pursuant thereto and to the sale agreement) of the
38 owners of the securities and benefitted parties as may be reasonable
39 and proper and not in violation of law. It shall be lawful for any bank
40 or trust company incorporated under the laws of the State which may
41 act as depository of the proceeds of securities or of any other funds or
42 obligations received on behalf of the corporation to furnish such
43 indemnifying bonds or to pledge such obligations as may be required
44 by the corporation. Any such trust agreement or trust indenture or
45 corporation resolution may contain such other provisions as the
46 corporation may deem reasonable and proper for priorities and

1 subordination among the owners of the securities and benefitted
2 parties.

3 g. The corporation may enter into, amend or terminate, as it
4 determines to be necessary or appropriate, any ancillary facilities (1)
5 to facilitate the issuance, sale, resale, purchase, repurchase or payment
6 of securities or the making or performance of swap contracts,
7 including without limitation bond insurance, letters of credit and
8 liquidity facilities or (2) to attempt to hedge risk or achieve a desirable
9 effective interest rate or cash flow. The determination of the
10 corporation that an ancillary facility or the amendment or termination
11 thereof is necessary or appropriate as aforesaid shall be conclusive.
12 Such ancillary facility shall be made upon the terms and conditions
13 established by the corporation, including without limitation provisions
14 as to security, default, termination, payment, remedy and consent to
15 service of process.

16 h. The corporation may enter into, amend or terminate any
17 ancillary facility as it determines to be necessary or appropriate to
18 place the obligations or investments of the corporation, as represented
19 by the securities or the investment of their proceeds, in whole or in
20 part, on the interest rate, cash flow or other basis desired by the
21 corporation, which facility may include without limitation contracts
22 commonly known as interest rate swap agreements, and futures or
23 contracts providing for payments based on levels of, or changes in,
24 interest rates. These contracts or arrangements may be entered into
25 by the corporation in connection with, or incidental to, entering into,
26 or maintaining any (1) agreement which secures securities of the
27 corporation or (2) investment, or contract providing for investments,
28 of reserves or similar facility guaranteeing an investment rate for a
29 period of years. The determination by the corporation that an ancillary
30 facility or the amendment or termination thereof is necessary or
31 appropriate as aforesaid shall be conclusive. Any ancillary facility may
32 contain such payment, security, default, remedy, termination
33 provisions and payments and other terms and conditions as determined
34 by the corporation, after giving due consideration to the
35 creditworthiness of the counterparty or other obligated party,
36 including without limitation any rating by any nationally recognized
37 rating agency, and any other criteria as may be appropriate.

38 i. Securities and ancillary facilities may contain a recital that they
39 are issued pursuant to this act, which recital shall be conclusive
40 evidence of their validity, the validity of any ancillary facility and the
41 regularity of the proceedings relating thereto.

42 j. Neither the members of the corporation nor any other person
43 executing the securities or an ancillary facility shall be subject to any
44 personal liability or accountability by reason of the issuance or
45 execution and delivery thereof.

1 8. The issuance of securities and the execution of any ancillary
2 facility under the provisions of this act shall not directly, or indirectly
3 or contingently obligate the State or any political subdivision thereof
4 to pay any amounts to the corporation or owner of securities or
5 benefitted parties or levy or pledge any form of taxation whatsoever
6 therefor. The securities and any ancillary facility shall not be a debt or
7 liability of the State or any agency or instrumentality thereof (other
8 than the corporation as set forth in this act), either legal, moral or
9 otherwise, and nothing contained in this act shall be construed to
10 authorize the corporation to incur any indebtedness on behalf of or in
11 any way to obligate the State or any political subdivision thereof, and
12 the securities and any ancillary facility shall contain on the face thereof
13 or other prominent place thereon in bold typeface a statement to the
14 foregoing effect. No appropriation of any moneys by the State to the
15 corporation is authorized in this act.

16

17 9. a. It is hereby determined that the creation of the corporation
18 and the carrying out of its authorized purposes is in all respects a
19 public and governmental purpose for the benefit of the people of the
20 State and for the improvement of their health, safety, welfare, comfort
21 and security, and that said purposes are public purposes and that the
22 corporation will be performing an essential governmental function in
23 the exercise of the powers conferred upon it by this act.

24 b. The property of the corporation and its income and operations
25 shall be exempt from taxation.

26 c. The securities and the interest thereon and the income derived
27 from all funds, revenues, incomes and other moneys received for or to
28 be received by the corporation shall be exempt from all taxes levied
29 pursuant to the provisions of Title 54 of the Revised Statutes or Title
30 54A of the New Jersey Statutes, except for transfer inheritance and
31 estate taxes levied pursuant to Subtitle 5 of Title 54 of the Revised
32 Statutes.

33 d. In the case of any securities, the interest on which is intended to
34 be exempt from federal income tax, the corporation shall prescribe
35 restrictions on the use of the proceeds thereof and related matters as
36 are necessary to assure such exemption, and the recipients of such
37 proceeds shall be bound thereby to the extent such restrictions shall be
38 made applicable to them. Any such recipient, including without
39 limitation the State or any political subdivision of the State, is
40 authorized to execute a tax regulatory agreement with the corporation
41 (and, as to any such political subdivision, the State) and the execution
42 of such an agreement may be treated as a condition to receiving any
43 such proceeds.

44

45 10. a. The State hereby pledges and agrees with the corporation,
46 and the owners of the securities and benefitted parties, that until all

1 securities and ancillary facilities, together with the interest thereon and
2 all costs and expenses in connection with any action or proceedings by
3 or on behalf of owners of securities or benefitted parties, are fully paid
4 and discharged the State will (1) irrevocably direct through the
5 Attorney General the escrow agent under the master settlement
6 agreement to transfer directly to the corporation or its assignee the
7 TSRs, (2) enforce the corporation's rights to receive the TSRs to the
8 full extent permitted by the terms of the master settlement agreement,
9 (3) not amend the master settlement agreement in any manner that
10 would materially impair the rights of the owners of the securities or of
11 the benefitted parties, (4) not limit or alter the rights of the
12 corporation to fulfill the terms of its agreements with such owners or
13 benefitted parties, (5) not in any way impair the rights and remedies of
14 such owners or benefitted parties or the security for such securities or
15 ancillary facilities (provided, that nothing herein shall be construed to
16 preclude the State's regulation of smoking and taxation and regulation
17 of the sale of cigarettes or the like), (6) not fail to enforce the
18 qualifying statute, and (7) not amend, supersede or repeal the
19 qualifying statute in any way that would materially adversely affect the
20 amount of any payment to, or materially impair the rights of, the
21 corporation, such owners of the securities or the benefitted parties.
22 The State representative is authorized and directed to include this
23 pledge and agreement in sale agreements and the corporation is
24 authorized and directed to include this pledge and agreement in any
25 contract with the owners of the securities and benefitted parties.

26 b. Prior to the date that is one year and one day after the
27 corporation no longer has any securities or ancillary facilities
28 outstanding, the corporation shall have no authority to file a voluntary
29 petition under chapter 9 of the federal bankruptcy code or such
30 corresponding chapter or sections as may, from time to time, be in
31 effect, and neither any public officer nor any organization, entity or
32 other person shall authorize the corporation to be or become a debtor
33 under chapter 9 or any successor or corresponding chapter or sections
34 during such period. The State hereby covenants with the owners of
35 the securities and benefitted parties that the State will not limit or alter
36 the denial of the corporation under this subsection during the period
37 referred to in the preceding sentence. The corporation is authorized
38 and directed to include this covenant as an agreement of the State in
39 any contract with the owners of the securities and benefitted parties.

40

41 11. Notwithstanding any restriction contained in any other law,
42 rule, regulation or order to the contrary, the State and all political
43 subdivisions of the State, their officers, boards, commissioners,
44 departments or other agencies, all banks, bankers, trust companies,
45 savings banks and institutions, building and loan associations, saving
46 and loan associations, investment companies and other persons

1 carrying on a banking or investment business, and all executors,
2 administrators, guardians, trustees and other fiduciaries, and all other
3 persons whatsoever who now are or may hereafter be authorized to
4 invest in bonds or other obligations of the State, may properly and
5 legally invest any sinking funds, moneys or other funds, including
6 capital, belonging to them or within their control, in any securities; and
7 said securities are hereby made securities which may properly and
8 legally be deposited with, and received by, any State municipal officers
9 or agency of the State, for any purpose for which the deposit of bonds
10 or other obligations of the State is now, or may hereafter be,
11 authorized by law.

12

13 12. Neither any member of the corporation nor any officer,
14 employee or agent of the corporation, while acting within the scope of
15 his or her authority, shall be subject to any personal liability resulting
16 from exercising or carrying out of any of the corporation's purposes
17 or powers.

18

19 13. The corporation may adopt any rule and regulation to
20 effectuate the purposes of this act and, if it does so, shall apply the
21 procedures of the "Administrative Procedure Act," P.L.1968, c.410
22 (C.52:14B-1 et seq.), with respect thereto.

23

24 14. This act and all powers granted hereby shall be liberally
25 construed to effectuate its intent and their purposes, without implied
26 limitations thereon. This act shall constitute full and complete
27 authority for all things herein contemplated to be done. All rights and
28 powers herein granted shall be cumulative with those derived from
29 other sources and shall not, except as expressly stated herein, be
30 construed in limitation thereof. Insofar as the provisions of this act are
31 inconsistent with the provisions of any other act, general or special,
32 the provisions of this act shall be controlling. If any clause, sentence,
33 paragraph, section or part of this act be adjudged by any court of
34 competent jurisdiction to be invalid, such judgment shall not affect,
35 impair or invalidate the remainder hereof but shall be applied in its
36 operation to the clause, sentence, paragraph, section or part hereof
37 directly involved in the controversy in which such judgment shall have
38 been rendered.

39

40 15. This act shall take effect immediately.

41

42

STATEMENT

43

44 This bill will permit the State to sell all or a part of its interest in the
45 Master Settlement Agreement of various claims between attorneys
46 general from 46 states and various territories of the United States

1 against the nation's largest tobacco companies.

2 Although the settlement agreement requires the companies to make
3 annual payments in perpetuity to the State, the receipt of any payment
4 at all is subject to the risk that companies party to the settlement
5 agreement will be unable or unwilling to continue making payments as
6 otherwise required. Additionally, the actual amount to which the
7 State is entitled under the settlement agreement is subject to the risk
8 that variables in the formula governing disbursement could change in
9 such a manner that would cause future payments to decrease. For
10 example, payments will decline if the volume of sales of cigarettes in
11 the United States decline, and the more they decline, the more the
12 payments to the State will decline.

13 The bill seeks to ensure that New Jersey receives the full benefit of
14 the settlement agreement and minimizes the risks by allowing the State
15 to sell a portion or all of its interest in the settlement agreement,
16 thereby obtaining the present value of the interest sold and transferring
17 the risks noted above to another entity.

18 This bill will permit the State to sell all or a part of its interest in the
19 settlement agreement. It will also establish a mechanism for ensuring
20 the highest possible sale price.

21 Specifically, this bill creates an independent Tobacco Settlement
22 Financing Corporation, separate and apart from the State and
23 empowers it to take such steps as are necessary to purchase all or a
24 portion of the State's interest in the settlement agreement. The bill
25 transfers from the State to the Tobacco Settlement Financing
26 Corporation any and all risks associated with the right to receive
27 payments under the interest in the settlement agreement as purchased
28 by the Tobacco Settlement Financing Corporation.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2502

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 17, 2002

The Assembly Budget Committee reports favorably Assembly Bill No. 2502 with committee amendments.

Assembly Bill No. 2502, as amended, permits the State to sell all or a part of its interest in the Master Settlement Agreement of various claims between attorneys general from 46 states and various territories of the United States against the nation's largest tobacco companies.

Although the settlement agreement requires the companies to make annual payments in perpetuity to the State, the receipt of any payment at all is subject to the risk that companies party to the settlement agreement will be unable or unwilling to continue making payments as otherwise required. Additionally, the actual amount to which the State is entitled under the settlement agreement is subject to the risk that variables in the formula governing disbursement could change in such a manner that would cause future payments to decrease. For example, payments will decline if the volume of sales of cigarettes in the United States decline, and the more they decline, the more the payments to the State will decline.

The bill seeks to ensure that New Jersey receives the full benefit of the settlement agreement and minimizes the risks by allowing the State to sell a portion or all of its interest in the settlement agreement, thereby obtaining the present value of the interest sold and transferring the risks noted above to another entity.

This bill will permit the State to sell all or a part of its interest in the settlement agreement. It will also establish a mechanism for ensuring the highest possible sale price.

Specifically, this bill creates an independent Tobacco Settlement Financing Corporation, separate and apart from the State and empowers it to take such steps as are necessary to purchase all or a portion of the State's interest in the settlement agreement. The bill transfers from the State to the Tobacco Settlement Financing Corporation any and all risks associated with the right to receive payments under the interest in the settlement agreement as purchased by the Tobacco Settlement Financing Corporation.

FISCAL IMPACT:

The Governor's budget recommendations for FY2003 indicate that the Executive anticipates \$1.075 billion in additional revenue as a result of the securitization authority proposed under this bill.

COMMITTEE AMENDMENTS:

The amendments provide that the Tobacco Settlement Financing Corporation may not transfer to the State during State fiscal year 2003 an amount from any net proceeds, earnings or residual interests of the sale of its tobacco receipts that are in excess of the amount appropriated from those funds in the State annual appropriations act for State fiscal year 2003.

MINORITY STATEMENT

By Assemblymen Malone, Blee, Kean and O'Toole

Through this bill, the Administration will be perpetrating the single-largest one-shot budget gimmick in the history of New Jersey. This will result in major structural deficits in State budgets for years to come; the need to identify more one-shot and permanent revenue sources in the future to feed the Administration's increased spending; and a depressed bond rating for the State.

Under this legislation, the Administration trades, for pennies on the dollar, New Jersey's \$7.6 billion share of the tobacco Master Settlement Agreement (MSA) for one short-sighted, quick infusion of cash to fund more than \$2 billion in increased spending in the FY'03 budget.

According to the MSA, New Jersey is entitled to receive approximately \$330 million annually for the next 23 years. While many other states have opted to securitize their share of the MSA, New Jersey would be the only one to do so to fund its operating budget. And due to this use of the money, the State will have to pay a higher interest rate. New Jersey's prospects for return are further minimized by the bond market being inundated with tobacco bond offerings. In a recent offering, the state of Florida received a quote of only \$0.29 on the dollar for issuance of bonds on its share of the MSA.

In the end, the Administration optimistically predicts that the State will net only \$2.5 billion on the sale of \$7.6 billion in bonds. This means that the State will be walking away from more than \$5 billion in revenue over the next 23 years, without any tangible benefit.

All this plan does is prolong the State's budget problems and delay the inevitable confrontation between finding new revenue and the Governor's thirst for spending.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2502

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 27, 2002

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 2502 (1R).

This bill permits the State to sell all or a part of its interest in the Master Settlement Agreement of various claims between attorneys general from 46 states and various territories of the United States against the nation's largest tobacco companies.

Although the settlement agreement requires the companies to make annual payments in perpetuity to the State, the receipt of any payment at all is subject to the risk that companies party to the settlement agreement will be unable or unwilling to continue making payments as otherwise required. Additionally, the actual amount to which the State is entitled under the settlement agreement is subject to the risk that variables in the formula governing disbursement could change in such a manner that would cause future payments to decrease. For example, payments will decline if the volume of sales of cigarettes in the United States decline, and the more they decline, the more the payments to the State will decline.

The bill seeks to ensure that New Jersey receives the full benefit of the settlement agreement and minimizes the risks by allowing the State to sell a portion or all of its interest in the settlement agreement, thereby obtaining the present value of the interest sold and transferring the risks noted above to another entity.

This bill will permit the State to sell all or a part of its interest in the settlement agreement. It will also establish a mechanism for ensuring the highest possible sale price.

Specifically, this bill creates an independent Tobacco Settlement Financing Corporation, separate and apart from the State and empowers it to take such steps as are necessary to purchase all or a portion of the State's interest in the settlement agreement. The bill transfers from the State to the Tobacco Settlement Financing Corporation any and all risks associated with the right to receive payments under the interest in the settlement agreement as purchased

by the Tobacco Settlement Financing Corporation.

The provisions of this bill, as amended, are identical to those of Senate Bill No. 1588 Sca, which the committee also reports this day.

COMMITTEE AMENDMENTS

Committee amendments clarify a provision concerning payment to the State of the proceeds from the sale of tobacco receipts.

FISCAL IMPACT

The Governor's budget recommendations for FY2003 indicate that the Executive anticipates \$1.075 billion in additional revenue as a result of the securitization authority proposed under this bill.

SENATE, No. 1588

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MAY 30, 2002

Sponsored by:

Senator WAYNE R. BRYANT

District 5 (Camden and Gloucester)

SYNOPSIS

The "Tobacco Settlement Financing Corporation Act."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT creating and providing for the purposes and powers of the
2 Tobacco Settlement Financing Corporation, supplementing Title 52
3 of the Revised Statutes.

4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7

8 1. This act shall be known and may be cited as the "Tobacco
9 Settlement Financing Corporation Act."

10

11 2. The purpose of this act is to authorize, create and establish a
12 corporation empowered to acquire from the State all or a portion of
13 the State's tobacco receipts; to authorize the sale by the State of all or
14 a portion of the State's tobacco receipts to the corporation; to
15 authorize the transfer to and the receipt by the corporation of such
16 tobacco receipts; to authorize the corporation to issue securities of the
17 corporation for the purposes authorized in this act, payable solely from
18 and secured solely by such portion of the State's tobacco receipts as
19 the corporation may designate and pledge to secure the securities,
20 together with the investment income thereon and any reserve funds
21 created by the corporation from any portion of the proceeds of such
22 securities; to authorize the corporation to hold and invest such portion
23 of the net proceeds of the sale of the securities pending direction by
24 the State and such portion of the State's tobacco receipts sold to the
25 corporation which are not pledged to secure securities of the
26 corporation; and to authorize the corporation to manage such portion
27 of the net proceeds of the sale of the securities pending direction by
28 the State and all or a portion of the State's tobacco receipts sold to the
29 corporation for the purposes and in the manner authorized in this act.

30

31 3. a. There is hereby established in, but not of, the Department of
32 Treasury a public body corporate and politic, with corporate
33 succession, to be known as the "Tobacco Settlement Financing
34 Corporation." The corporation is hereby constituted as an
35 instrumentality of the State exercising public and essential
36 governmental functions, and the exercise by the corporation of the
37 powers conferred by this act shall be deemed and held to be an
38 essential governmental function of the State. Notwithstanding the
39 existence of common management, the corporation shall be treated and
40 accounted for as a separate legal entity with its separate corporate
41 purposes as set forth in this act. The assets, liabilities and funds of the
42 corporation shall be neither consolidated nor commingled with those
43 of the State or of any entity capable of being a debtor in a case
44 commenced under the federal bankruptcy code.

45

46 b. The corporation shall have and be governed by three members
who shall be the Commissioner of Health and Senior Services of the

S1588 BRYANT

1 State and the State Treasurer, who shall be members ex officio, and
2 one public member appointed by the Governor (who shall have
3 knowledge in the area of health care or the provision of health care)
4 who shall serve at the pleasure of the Governor; provided however,
5 the Governor may appoint the head of a principal department of the
6 State to replace the Commissioner of Health and Senior Services of
7 the State as a member. The State Treasurer shall serve as the
8 chairperson of the corporation. The corporation shall elect from
9 among its members a vice chairman. The powers of the corporation
10 shall be vested in the members thereof in office from time to time and
11 a majority of the total authorized membership of the corporation shall
12 constitute a quorum at any meeting thereof. Action may be taken and
13 motions and resolutions adopted by the corporation at any meeting
14 thereof by the affirmative vote of a majority of the members present.
15 No vacancy in the membership of the corporation shall impair the right
16 of a quorum of the members to exercise all the powers and perform all
17 the duties of the corporation.

18 c. Each member before entering upon his or her duties shall take
19 and subscribe an oath to perform the duties of his or her office
20 faithfully, impartially and justly to the best of his or her ability. A
21 record of such oaths shall be filed in the office of the Secretary of
22 State.

23 d. The State Treasurer shall be the president of the corporation, the
24 Deputy State Treasurer shall be the vice president of the corporation
25 and the State Comptroller shall be the treasurer of the corporation.
26 The president of the corporation shall appoint the secretary of the
27 corporation. The staff of the office of the State Treasurer shall also
28 serve as staff of the corporation. State officers, agencies, and
29 departments may render services to the corporation within their
30 respective functions, as requested by the corporation.

31 e. Each member and the treasurer of the corporation shall execute
32 a bond to be conditioned upon the faithful performance of the duties
33 of such member or treasurer in such form and amount as may be
34 prescribed by the State Comptroller. Such bonds shall be filed in the
35 office of the Secretary of State. At all times thereafter the members
36 and treasurer of the corporation shall maintain such bonds in full force
37 and effect. All costs of such bonds shall be borne by the corporation.

38 f. The members of the corporation shall serve without
39 compensation, but the corporation shall reimburse its members for
40 actual expenses necessarily incurred in the discharge of their duties.
41 Notwithstanding the provisions of any other laws, no officer or
42 employee of the State shall be deemed to have forfeited or shall forfeit
43 his or her office or employment or any benefits or emoluments thereof
44 by reason of his or her acceptance of the office of ex officio member
45 or officer of the corporation or his or her services therein.

1 g. Each ex officio member of the corporation may designate an
2 officer or employee of his or her department to represent him or her
3 at meetings of the corporation, and each such designee may lawfully
4 vote and otherwise act on behalf of the member for whom he or she
5 constitutes the designee. Any such designation shall be in writing
6 delivered to the secretary of the corporation and shall continue in
7 effect until revoked or amended by writing delivered to the secretary
8 of the corporation.

9 h. The corporation may be dissolved by act of the Legislature on
10 condition that the corporation has no debts or obligations outstanding
11 or that provision has been made for the payment or retirement of such
12 debts or obligations. Upon any such dissolution of the corporation, all
13 property, funds and assets thereof shall be vested in the State.

14 i. The corporation shall cause an audit of its books and accounts
15 to be made at least once in each year by certified public accountants
16 and cause a copy thereof to be filed with the Secretary of State and the
17 State Comptroller.

18 j. No member, officer, employee or agent of the corporation shall
19 have an interest, either directly or indirectly, in any business
20 organization engaged in any business, contract or transaction with the
21 corporation or in any contract of any other person engaged in any
22 business with the corporation, or in the purchase, sale, lease or
23 transfer of any property to or from the corporation.

24
25 4. As used in this act, unless the context clearly requires a different
26 meaning:

27 "Ancillary facility" means any revolving credit agreement,
28 agreement establishing a line of credit or letter of credit,
29 reimbursement agreement, interest rate exchange or similar agreement,
30 currency exchange agreement, interest rate floor or cap, options, puts
31 or calls to hedge payment, currency, rate, spread or similar exposure,
32 or similar agreements, float agreements, forward agreements,
33 insurance contract, surety bond, commitment to purchase or sell
34 securities, purchase or sale agreement, or commitments or other
35 contracts or agreements and other security agreements approved by
36 the corporation, including without limitation any arrangement referred
37 to in subsection j., k., l. or m. of section 6 of this act;

38 "Benefitted parties" means person, firms or corporations that enter
39 into ancillary facilities with the corporation according to the provisions
40 of this act;

41 "Code" means the United States Internal Revenue Code of 1986, as
42 amended, and any successor provision of law;

43 "Costs of issuance" means any item of expense directly or indirectly
44 payable or reimbursable by the corporation and related to the
45 authorization, sale or issuance of securities, including without
46 limitation underwriting fees, and fees and expenses of consultants and

1 fiduciaries;

2 "Corporation" means the Tobacco Settlement Financing
3 Corporation established by section 3 of this act;

4 "Encumbered tobacco revenues" means that portion of the TSRs
5 that is pledged by the corporation to the repayment of any securities
6 pursuant to the terms of the applicable corporation resolution, trust
7 agreement or trust indenture;

8 "Financing costs" means all capitalized interest, operating and debt
9 service reserves, costs of issuance, fees for credit and liquidity
10 enhancements and other costs as the corporation determines to be
11 desirable in issuing, securing and marketing the securities;

12 "Interest rate exchange or similar agreement" means a written
13 contract with a counterparty to provide for an exchange of payments
14 based upon fixed and/or variable interest rates;

15 "Master settlement agreement" means the master settlement
16 agreement, dated November 23, 1998, among the attorneys general of
17 46 states, including the State, the District of Columbia, the
18 Commonwealth of Puerto Rico, Guam, the United States Virgin
19 Islands, American Samoa and the Territory of the Northern Mariana
20 Islands, on the one hand, and certain tobacco manufacturers, on the
21 other hand;

22 "Net proceeds" means the amount of proceeds remaining following
23 each sale of securities which are not required by the corporation to
24 establish and fund reserve or escrow funds or termination or
25 settlement payments under ancillary facilities and to provide the
26 financing costs and other expenses and fees directly related to the
27 authorization and issuance of securities;

28 "Operating expenses" means the reasonable operating expenses of
29 the corporation, including without limitation the cost of preparation of
30 accounting and other reports, costs of maintenance of the ratings on
31 the securities, insurance premiums and costs of annual meetings or
32 other required activities of the corporation, and fees and expenses
33 incurred for consultants and fiduciaries;

34 "Outstanding" means, when used with respect to securities, all
35 securities other than securities that shall have been paid in full at
36 maturity or that may be deemed not outstanding pursuant to the
37 applicable corporation resolution authorizing the issuance of such
38 securities and when used with respect to ancillary facilities, all
39 ancillary facilities other than ancillary facilities that have been paid in
40 full or that may be deemed not outstanding under such ancillary
41 facilities;

42 "Qualifying statute" means "qualifying statute" as defined in the
43 master settlement agreement; currently P.L.1999, c.148 (C.52:4D-1 et
44 seq.);

45 "Residual interests" means: the unencumbered tobacco revenues;
46 the net proceeds not previously paid to the State; the income of the

1 corporation that is in excess of the corporation's requirements to pay
2 its operating expenses, debt service, sinking fund requirements, reserve
3 fund or escrow fund requirements and any other contractual
4 obligations to the owners of the securities or benefitted parties, or that
5 may be incurred in connection with the issuance of the securities or the
6 execution of ancillary facilities, and such contractual rights, if any, as
7 shall be provided to the State in accordance with the terms of any sale
8 or agreements;

9 "Sale agreement" means any agreement authorized pursuant to
10 section 5 of this act in which the State provides for the sale of TSRs
11 to the corporation;

12 "Securities" means any securities, including without limitation any
13 bonds, notes and other evidence of indebtedness, issued by the
14 corporation pursuant to section 7 of this act;

15 "State" means the State of New Jersey;

16 "State representative" means the State acting by and through the
17 State Treasurer;

18 "State's tobacco receipts" means a) all tobacco settlement
19 payments that are received by the State that are required to be made,
20 pursuant to the terms of the master settlement agreement, by tobacco
21 manufacturers to the State, and b) the State's rights to receive such
22 tobacco settlement payments;

23 "TSRs" means the portion (which may include any or all) of the
24 State's tobacco receipts sold to the corporation pursuant to this act
25 and any sale agreement; and

26 "Unencumbered tobacco revenues" means that portion of the TSRs
27 that is not pledged by the corporation to the repayment of any
28 securities pursuant to the terms of the applicable corporation
29 resolution, trust agreement or trust indenture.

30

31 5. a. The State representative may sell to the corporation, and the
32 corporation may purchase, for cash or other consideration and in one
33 or more installments, all or a portion of the State's tobacco receipts
34 pursuant to the terms of one or more sale agreements. Any such sale
35 agreement shall provide, among other matters, that the purchase price
36 payable by the corporation to the State for such TSRs shall consist of
37 the net proceeds and the residual interests, if any. Any such sale shall
38 be pursuant to one or more sale agreements that may contain such
39 terms and conditions deemed appropriate by the State representative
40 to carry out and effectuate the purposes of this section, including
41 without limitation covenants binding the State in favor of the
42 corporation and its assignees, including without limitation the owners
43 of its securities and benefitted parties, such as a requirement that the
44 State enforce the provisions of the master settlement agreement that
45 require payment of the TSRs, a requirement that the State enforce the
46 provisions of the qualifying statute, a provision authorizing inclusion

1 of the State's pledge and agreement, as set forth in section 10 of this
2 act, in any agreement with owners of the securities or any ancillary
3 facilities, and covenants with respect to the application and use of the
4 proceeds of the sale of the State's tobacco receipts to preserve the tax-
5 exemption of the interest on any securities, if issued as tax-exempt.
6 The State representative in any sale agreement may agree to, and the
7 corporation may provide for, the assignment of the corporation's right,
8 title and interest under such sale agreement for the benefit and security
9 of the owners of securities and benefitted parties.

10 b. Any sale of TSRs to the corporation pursuant to a sale
11 agreement shall be treated as a true sale and absolute transfer of the
12 property so transferred and not as a pledge or other security interest
13 for any borrowing. The characterization of such a sale as an absolute
14 transfer by the participants shall not be negated or adversely affected
15 by the fact that only a portion of the State's tobacco receipts is
16 transferred, nor by the acquisition or retention by the State of a
17 residual interest, nor by the participation by any State official as a
18 member or officer of the corporation, nor by the commingling of
19 amounts arising with respect to the TSRs with other amounts, nor by
20 whether the State is responsible for collecting the TSRs or otherwise
21 enforcing the master settlement agreement or retains legal title to such
22 portion of the State's tobacco receipts for the purposes of these
23 collection activities, nor by any characterization of the corporation or
24 its obligations for purposes of accounting, taxation or securities
25 regulation, nor by any other factor whatsoever.

26 c. On and after the effective date of each sale of TSRs, the State
27 shall have no right, title or interest in or to the TSRs sold, and the
28 TSRs so sold shall be property of the corporation and not of the State,
29 and shall be owned, received, held and disbursed by the corporation
30 and not the State. On or before the effective date of any such sale, the
31 State through the Attorney General shall notify the escrow agent under
32 the master settlement agreement that such TSRs have been sold to the
33 corporation and irrevocably instruct such escrow agent that,
34 subsequent to such date, such TSRs are to be paid directly to the
35 corporation or the trustee under the applicable corporation resolution,
36 trust agreement or trust indenture for the benefit of the owners of the
37 securities and benefitted parties until such securities and ancillary
38 facilities are no longer outstanding. Thereafter, any officer or agent
39 of the State who shall receive any such TSRs shall hold the same in
40 trust for the corporation or such trustee, as applicable, and shall
41 promptly remit the same to the corporation or such trustee, as
42 applicable.

43 d. The net proceeds and any earnings thereon shall never be
44 pledged to, nor made available for, payment of the securities or any
45 interest or redemption price thereon or any other debt or obligation of
46 the corporation. The net proceeds, any earnings thereon and any

1 residual interests shall be applied, transferred, or paid to or upon the
2 order of the State, as directed by the State representative, and shall
3 be used by the State for any bona fide governmental purposes as
4 determined by the State, including without limitation for capital
5 expenditures, debt service on outstanding bonds of the State, working
6 capital expenditures or operating deficit needs of the State,
7 endowments, or grants or aid to political subdivisions, including
8 without limitation school districts, of the State. Pending such
9 direction by the State representative, the corporation shall invest such
10 moneys such that funds will be available at such times as the State
11 representative shall deem necessary for the expenditure thereof. The
12 State is authorized and may arrange for the availability of the net
13 proceeds from the corporation on such terms and conditions as the
14 State representative deems appropriate and may include in the sale
15 agreement provisions for interfund transactions with respect thereto
16 between the State and the corporation.

17

18 6. The corporation also shall have the power to:

19 a. sue and be sued;

20 b. have a seal and alter the same at its pleasure;

21 c. make and alter by-laws for its organization and internal
22 management and make rules and regulations governing the use of its
23 property and facilities;

24 d. make and execute contracts including without limitation sale
25 agreements, trust agreements, trust indentures, bond purchase
26 agreements, tax regulatory agreements, continuing disclosure
27 agreements, ancillary facilities and all other instruments necessary or
28 convenient for the exercise of its powers and functions, and commence
29 any action to protect or enforce any right conferred upon it by any
30 law, contract or other agreement;

31 e. engage the services of financial advisors and experts, placement
32 agents, underwriters, appraisers and such other advisors, consultants
33 and fiduciaries as may be necessary to effectuate the purposes of this
34 act;

35 f. pay its operating expenses and financing costs;

36 g. borrow money in its name and issue negotiable securities and
37 provide for the rights of the owners thereof;

38 h. procure insurance against any loss in connection with its
39 activities, properties and assets in such amount and from such insurers
40 as it deems desirable;

41 i. invest any funds or other moneys under its custody and control
42 in investments and securities that are legal investments under the laws
43 of the State for funds of the State and, notwithstanding any law to the
44 contrary, in any ancillary facility, in obligations the interest on which
45 is exempt from federal income taxation under the code and in shares
46 or participation interests in funds or trusts that invest solely in such

1 obligations;

2 j. as security for the payment of the principal of and interest on any
3 securities and for its obligations under any ancillary facility, pledge all
4 or any part of the TSRs or other assets;

5 k. procure insurance, letters of credit or other credit enhancement
6 with respect to any securities for the payment of tenders of securities,
7 or for the payment upon maturity of short-term securities;

8 l. (1) enter into any ancillary facility with any person under such
9 terms and conditions as the corporation, with the approval of the State
10 Treasurer, may determine;

11 (2) procure insurance, letters of credit or other credit enhancement
12 with respect to any ancillary facility;

13 (3) provide security for the payment or performance of its
14 obligations with respect to any ancillary facility from such sources and
15 with the same effect as is authorized by this act with respect to
16 security for securities; and

17 (4) modify, amend or replace any existing, or enter into a new,
18 ancillary facility; and

19 m. do any and all things necessary or convenient to carry out its
20 purposes and exercise the powers expressly given and granted in this
21 act.

22

23 7. a. (1) The corporation shall have power and is hereby
24 authorized from time to time to issue securities in such principal
25 amount or amounts as the corporation shall determine to be necessary
26 to provide sufficient funds for achieving its authorized purposes,
27 consisting of the purchase of all or a portion of the State's tobacco
28 receipts pursuant to section 5 of this act and the payment of or
29 provision for financing costs.

30 (2) The issuance of securities shall be authorized by a corporation
31 resolution. No corporation resolution authorizing the issuance of
32 securities (including securities issued to refund securities) pursuant to
33 this act shall be adopted or otherwise made effective without the
34 approval in writing of the State Treasurer. Securities (including
35 securities issued to refund securities) may be issued without obtaining
36 the consent of any department, division, commission, board, bureau or
37 agency of the State, other than the approval as required by this
38 subsection, and without any other proceedings or the occurrence of
39 any other conditions or other things other than those proceedings,
40 conditions or things which are specifically required by this act. Every
41 issue of securities shall be special revenue obligations payable from
42 and secured by a pledge of encumbered tobacco revenues and other
43 assets, including without limitation those proceeds of such securities
44 deposited in a reserve fund for the benefit of the owners of the
45 securities, earnings on funds of the corporation and such other funds
46 as may become available, upon such terms and conditions as approved

1 by the State Treasurer and as specified by the corporation in the
2 corporation resolution pursuant to which the securities are issued or
3 in a related trust agreement or trust indenture.

4 (3) The corporation shall issue securities to refund any securities
5 by the issuance of new securities, whenever it deems such refunding
6 expedient, whether the securities to be refunded have or have not
7 matured, and to issue securities partly to refund securities then
8 outstanding and partly for any of its other authorized purposes. The
9 refunding securities may be exchanged for the securities to be refunded
10 or sold and the proceeds applied to the purchase, redemption or
11 payment of such securities.

12 b. Each issue of securities shall be dated, shall bear interest (which,
13 under the code, may be includable in or excludable from the gross
14 income of the owners for federal income tax purposes) at such fixed
15 or variable rates, payable at or prior to maturity, and shall mature at
16 such time or times, as may be determined by the corporation and may
17 be made redeemable before maturity, at the option of the corporation,
18 at such price or prices and under such terms and conditions as may be
19 fixed by the corporation. The principal and interest of such securities
20 may be made payable in any lawful medium. The corporation shall
21 determine the form of the securities, either coupon, registered or
22 book-entry form, and the manner of execution of the securities and
23 shall fix the denomination or denominations of the securities and the
24 place or places of payment of principal and interest thereof, which may
25 be at any bank or trust company within or without the State. If any
26 officer whose signature or a facsimile thereof appears on any securities
27 or coupons shall cease to be such officer before the delivery of such
28 securities, such signature or facsimile shall nevertheless be valid and
29 sufficient for all purposes as if he or she had remained in office until
30 such delivery. The securities may be issued in coupon or in registered
31 form or both, as the corporation may determine, and provisions may
32 be made for the registration of any coupon securities as to principal
33 alone and as to both principal and interest and for the reconversion of
34 any securities registered as to both principal and interest into coupon
35 securities. The corporation may also provide for temporary securities
36 and for the replacement of any security that shall become mutilated or
37 shall be destroyed or lost.

38 c. The corporation with the approval of the State Treasurer may
39 sell such securities in such manner, either at public or private sale and
40 on either a competitive or negotiated basis. The proceeds of such
41 securities shall be disbursed for the purposes for which such securities
42 were issued as the act, the sale agreement and the corporation
43 resolution authorizing the issuance of such securities or the related
44 trust agreement or trust indenture may provide.

1 d. Any pledge made by the corporation shall be valid and binding
2 at the time the pledge is made. The revenues, reserves or earnings so
3 pledged or earnings on the investment thereof shall immediately be
4 subject to the lien of such pledge without any physical delivery thereof
5 or further act and the lien of any such pledge shall be valid and binding
6 as against all parties having claims of any kind in tort, contract or
7 otherwise against the corporation, irrespective of whether such parties
8 have notice thereof. Notwithstanding any other provision of law to
9 the contrary, neither the corporation resolution nor any trust
10 agreement or trust indenture or other instrument by which a pledge is
11 created or by which the corporation's interest in encumbered tobacco
12 revenues, reserves or earnings thereon is assigned need be filed or
13 recorded in any public records in order to protect the pledge thereof
14 or perfect the lien thereof as against third parties, except that a copy
15 thereof shall be filed in the records of the corporation.

16 e. Notwithstanding the provisions of any other law to the contrary,
17 any securities issued pursuant to this act shall be fully negotiable
18 within the meaning and for all purposes of Title 12A of the New Jersey
19 Statutes, and each owner of such a security or other obligation, or of
20 any coupon appurtenant thereto, by accepting the security or coupon
21 shall be conclusively deemed to have agreed that the security or
22 coupon is and shall be fully negotiable within the meaning and for all
23 purposes of Title 12A.

24 f. In the discretion of the corporation, any securities and any
25 ancillary facilities may be secured by a trust agreement or trust
26 indenture by and between the corporation and the trustee thereunder,
27 which may be any trust company or bank having the powers of a trust
28 company, whether located within or without the State. Such trust
29 agreement or trust indenture or corporation resolution providing for
30 the issuance of such securities may provide for the creation and
31 maintenance of such reserves as the corporation shall determine to be
32 proper and may include covenants setting forth the duties of the
33 corporation in relation to the securities, the ancillary facilities, the
34 income to the corporation, the sale agreement and the encumbered
35 tobacco revenues. Such trust agreement or trust indenture or
36 corporation resolution may contain provisions respecting the custody,
37 safeguarding and application of all moneys and securities and may
38 contain such provisions for protecting and enforcing the rights and
39 remedies (pursuant thereto and to the sale agreement) of the owners
40 of the securities and benefitted parties as may be reasonable and
41 proper and not in violation of law. It shall be lawful for any bank or
42 trust company incorporated under the laws of the State which may act
43 as depository of the proceeds of securities or of any other funds or
44 obligations received on behalf of the corporation to furnish such
45 indemnifying bonds or to pledge such obligations as may be required
46 by the corporation. Any such trust agreement or trust indenture or

1 corporation resolution may contain such other provisions as the
2 corporation may deem reasonable and proper for priorities and
3 subordination among the owners of the securities and other benefitted
4 parties.

5 g. The corporation may enter into, amend or terminate, as it
6 determines to be necessary or appropriate, any ancillary facilities (1)
7 to facilitate the issuance, sale, resale, purchase, repurchase or payment
8 of securities or the making or performance of swap contracts,
9 including without limitation bond insurance, letters of credit and
10 liquidity facilities or (2) to attempt to hedge risk or achieve a desirable
11 effective interest rate or cash flow. The determination of the
12 corporation that an ancillary facility or the amendment or termination
13 thereof is necessary or appropriate as aforesaid shall be conclusive.
14 Such ancillary facility shall be made upon the terms and conditions
15 established by the corporation, including without limitation provisions
16 as to security, default, termination, payment, remedy and consent to
17 service of process.

18 h. The corporation may enter into, amend or terminate, any
19 ancillary facility as it determines to be necessary or appropriate to
20 place the obligations or investments of the corporation, as represented
21 by the securities or the investment of their proceeds, in whole or in
22 part, on the interest rate, cash flow or other basis desired by the
23 corporation, which facility may include without limitation contracts
24 commonly known as interest rate swap agreements, and futures or
25 contracts providing for payments based on levels of, or changes in,
26 interest rates. These contracts or arrangements may be entered into
27 by the corporation in connection with, or incidental to, entering into,
28 or maintaining any (1) agreement which secures securities of the
29 corporation or (2) investment, or contract providing for investments,
30 of reserves or similar facility guaranteeing an investment rate for a
31 period of years. The determination by the corporation that an ancillary
32 facility or the amendment or termination thereof is necessary or
33 appropriate as aforesaid shall be conclusive. Any ancillary facility may
34 contain such payment, security, default, remedy, termination
35 provisions and payments and other terms and conditions as determined
36 by the corporation, after giving due consideration to the
37 creditworthiness of the counterparty or other obligated party,
38 including without limitation any rating by any nationally recognized
39 rating agency, and any other criteria as may be appropriate.

40 i. Securities and ancillary facilities may contain a recital that they
41 are issued pursuant to this act, which recital shall be conclusive
42 evidence of their validity, the validity of any ancillary facility and the
43 regularity of the proceedings relating thereto.

44 j. Neither the members of the corporation nor any other person
45 executing the securities or an ancillary facility shall be subject to any
46 personal liability or accountability by reason of the issuance or

1 execution and delivery thereof.

2

3 8. The issuance of securities and the execution of any ancillary
4 facility under the provisions of this act shall not directly, or indirectly
5 or contingently obligate the State or any political subdivision thereof
6 to pay any amounts to the corporation or owner of securities or
7 benefitted parties or levy or pledge any form of taxation whatsoever
8 therefor. The securities and any ancillary facility shall not be a debt or
9 liability of the State or any agency or instrumentality thereof (other
10 than the corporation as set forth in this act), either legal, moral or
11 otherwise, and nothing contained in this act shall be construed to
12 authorize the corporation to incur any indebtedness on behalf of or in
13 any way to obligate the State or any political subdivision thereof, and
14 the securities and any ancillary facility shall contain on the face thereof
15 or other prominent place thereon in bold typeface a statement to the
16 foregoing effect. No appropriation of any moneys by the State to the
17 corporation is authorized in this act.

18

19 9. a. It is hereby determined that the creation of the corporation
20 and the carrying out of its authorized purposes is in all respects a
21 public and governmental purpose for the benefit of the people of the
22 State and for the improvement of their health, safety, welfare, comfort
23 and security, and that said purposes are public purposes and that the
24 corporation will be performing an essential governmental function in
25 the exercise of the powers conferred upon it by this act.

26 b. The property of the corporation and its income and operations
27 shall be exempt from taxation.

28 c. The securities and the interest thereon and the income derived
29 from all funds, revenues, incomes and other moneys received for or to
30 be received by the corporation and pledged and available to pay or
31 secure the payment on securities and the interest thereon, shall be
32 exempt from all taxes levied pursuant to the provisions of Title 54 of
33 the Revised Statutes or Title 54A of the New Jersey Statutes, except
34 for transfer inheritance and estate taxes levied pursuant to Subtitle 5
35 of Title 54 of the Revised Statutes.

36 d. In the case of any securities, the interest on which is intended to
37 be exempt from federal income tax, the corporation shall prescribe
38 restrictions on the use of the proceeds thereof and related matters as
39 are necessary to assure such exemption, and the recipients of such
40 proceeds shall be bound thereby to the extent such restrictions shall be
41 made applicable to them. Any such recipient, including without
42 limitation the State or any political subdivision of the State, is
43 authorized to execute a tax regulatory agreement with the corporation
44 (and, as to any such political subdivision, the State) and the execution
45 of such an agreement may be treated as a condition to receiving any
46 such proceeds.

1 10. a. The State hereby pledges and agrees with the corporation,
2 and the owners of the securities and benefitted parties, that until all
3 securities and ancillary facilities, together with the interest thereon and
4 all costs and expenses in connection with any action or proceedings by
5 or on behalf of owners of securities or benefitted parties, are fully paid
6 and discharged the State will (1) irrevocably direct through the
7 Attorney General the escrow agent under the master settlement
8 agreement to transfer directly to the corporation or its assignee the
9 TSRs, (2) enforce the corporation's rights to receive the TSRs to the
10 full extent permitted by the terms of the master settlement agreement,
11 (3) not amend the master settlement agreement in any manner that
12 would materially impair the rights of the owners of the securities or of
13 the benefitted parties, (4) not limit or alter the rights of the
14 corporation to fulfill the terms of its agreements with such owners or
15 benefitted parties, (5) not in any way impair the rights and remedies of
16 such owners or benefitted parties or the security for such securities or
17 ancillary facilities (provided, that nothing herein shall be construed to
18 preclude the State's regulation of smoking and taxation and regulation
19 of the sale of cigarettes or the like), (6) not fail to enforce the
20 qualifying statute, and (7) not amend, supersede or repeal the
21 qualifying statute in any way that would materially adversely affect the
22 amount of any payment to, or materially impair the rights of, the
23 corporation, such owners of the securities or the benefitted parties.
24 The State representative is authorized and directed to include this
25 pledge and agreement in sale agreements and the corporation is
26 authorized and directed to include this pledge and agreement in any
27 contract with the owners of the securities and benefitted parties.

28 b. Prior to the date that is one year and one day after the
29 corporation no longer has any securities or ancillary facilities
30 outstanding, the corporation shall have no authority to file a voluntary
31 petition under chapter 9 of the federal bankruptcy code or such
32 corresponding chapter or sections as may, from time to time, be in
33 effect, and neither any public officer nor any organization, entity or
34 other person shall authorize the corporation to be or become a debtor
35 under chapter 9 or any successor or corresponding chapter or sections
36 during such period. The State hereby covenants with the owners of
37 the securities of the corporation and benefitted parties that the State
38 will not limit or alter the denial of the corporation under this
39 subsection during the period referred to in the preceding sentence.
40 The corporation is authorized and directed to include this covenant as
41 an agreement of the State in any contract with the owners of the
42 securities and benefitted parties.

43

44 11. Notwithstanding any restriction contained in any other law,
45 rule, regulation or order to the contrary, the State and all political
46 subdivisions of the State, their officers, boards, commissioners,

1 departments or other agencies, all banks, bankers, trust companies,
2 savings banks and institutions, building and loan associations, saving
3 and loan associations, investment companies and other persons
4 carrying on a banking or investment business, and all executors,
5 administrators, guardians, trustees and other fiduciaries, and all other
6 persons whatsoever who now are or may hereafter be authorized to
7 invest in bonds or other obligations of the State, may properly and
8 legally invest any sinking funds, moneys or other funds, including
9 capital, belonging to them or within their control, in any securities; and
10 said securities are hereby made securities which may properly and
11 legally be deposited with, and received by, any State municipal officers
12 or agency of the State, for any purpose for which the deposit of bonds
13 or other obligations of the State is now, or may hereafter be,
14 authorized by law.

15

16 12. Neither any member of the corporation nor any officer,
17 employee or agent of the corporation, while acting within the scope of
18 his or her authority, shall be subject to any personal liability resulting
19 from exercising or carrying out of any of the corporation's purposes
20 or powers.

21

22 13. The corporation may adopt any rule and regulation to
23 effectuate the purposes of this act and, if it does so, shall apply the
24 procedures of the "Administrative Procedure Act," P.L.1968, c.410
25 (C.52:14B-1 et seq.), with respect thereto.

26

27 14. This act and all powers granted hereby shall be liberally
28 construed to effectuate its intent and their purposes, without implied
29 limitations thereon. This act shall constitute full and complete
30 authority for all things herein contemplated to be done. All rights and
31 powers herein granted shall be cumulative with those derived from
32 other sources and shall not, except as expressly stated herein, be
33 construed in limitation thereof. Insofar as the provisions of this act are
34 inconsistent with the provisions of any other act, general or special,
35 the provisions of this act shall be controlling. If any clause, sentence,
36 paragraph, section or part of this act be adjudged by any court of
37 competent jurisdiction to be invalid, such judgment shall not affect,
38 impair or invalidate the remainder hereof but shall be applied in its
39 operation to the clause, sentence, paragraph, section or part hereof
40 directly involved in the controversy in which such judgment shall have
41 been rendered.

42

43 15. This act shall take effect immediately.

STATEMENT

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This bill will permit the State to sell all or a part of its interest in the Master Settlement Agreement of various claims between attorneys general from 46 states and various territories of the United States against the nation's largest tobacco companies.

Although the settlement agreement requires the companies to make annual payments in perpetuity to the State, the receipt of any payment at all is subject to the risk that companies party to the settlement agreement will be unable or unwilling to continue making payments as otherwise required. Additionally, the actual amount to which the State is entitled under the settlement agreement is subject to the risk that variables in the formula governing disbursement could change in such a manner that would cause future payments to decrease. For example, payments will decline if the volume of sales of cigarettes in the United States decline, and the more they decline, the more the payments to the State will decline.

The bill seeks to ensure that New Jersey receives the full benefit of the settlement agreement and minimizes the risks by allowing the State to sell a portion or all of its interest in the settlement agreement, thereby obtaining the present value of the interest sold and transferring the risks noted above to another entity.

This bill will permit the State to sell all or a part of its interest in the settlement agreement. It will also establish a mechanism for ensuring the highest possible sale price.

Specifically, this bill creates an independent Tobacco Settlement Financing Corporation, separate and apart from the State and empowers it to take such steps as are necessary to purchase all or a portion of the State's interest in the settlement agreement. The bill transfers from the State to the Tobacco Settlement Financing Corporation any and all risks associated with the right to receive payments under the interest in the settlement agreement as purchased by the Tobacco Settlement Financing Corporation.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1588

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 27, 2002

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 1588.

This bill permits the State to sell all or a part of its interest in the Master Settlement Agreement of various claims between attorneys general from 46 states and various territories of the United States against the nation's largest tobacco companies.

Although the settlement agreement requires the companies to make annual payments in perpetuity to the State, the receipt of any payment at all is subject to the risk that companies party to the settlement agreement will be unable or unwilling to continue making payments as otherwise required. Additionally, the actual amount to which the State is entitled under the settlement agreement is subject to the risk that variables in the formula governing disbursement could change in such a manner that would cause future payments to decrease. For example, payments will decline if the volume of sales of cigarettes in the United States decline, and the more they decline, the more the payments to the State will decline.

The bill seeks to ensure that New Jersey receives the full benefit of the settlement agreement and minimizes the risks by allowing the State to sell a portion or all of its interest in the settlement agreement, thereby obtaining the present value of the interest sold and transferring the risks noted above to another entity.

This bill will permit the State to sell all or a part of its interest in the settlement agreement. It will also establish a mechanism for ensuring the highest possible sale price.

Specifically, this bill creates an independent Tobacco Settlement Financing Corporation, separate and apart from the State and empowers it to take such steps as are necessary to purchase all or a portion of the State's interest in the settlement agreement. The bill transfers from the State to the Tobacco Settlement Financing Corporation any and all risks associated with the right to receive payments under the interest in the settlement agreement as purchased by the Tobacco Settlement Financing Corporation.

The provisions of this bill, as amended, are identical to those of Assembly Bill No. 2502 (1R) Sca, which the committee also reports this day.

COMMITTEE AMENDMENTS

Committee amendments (1) provide that the Tobacco Settlement Financing Corporation may not transfer to the State during State fiscal year 2003 an amount from any net proceeds, earnings or residual interests of the sale of its tobacco receipts that are in excess of the amount appropriated from those funds in the State annual appropriations act for State fiscal year 2003, and (2) clarify a provision concerning payment to the State of the proceeds from the sale of tobacco receipts.

FISCAL IMPACT

The Governor's budget recommendations for FY2003 indicate that the Executive anticipates \$1.075 billion in additional revenue as a result of the securitization authority proposed under this bill.