



D. Nole
State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1528/1 *2*
RC/PK/RM/JTK/RN:cjs:pg
RMR

TODAY
Tue ~~*Wednesday*~~
4:30

2001 BILL

RPN *D-Nole*

DOA BUDGET

This is now a
DOA Budget
Draft

...;

DO NOT
GEN

~~*Speaker*~~
~~*Cal. J. P. ...*~~
~~*Leg. of ...*~~

1 AN ACT ~~to amend~~ 25.15 (2) (intro.), 25.66 (1), 231.01 (9), 231.09, 231.16 (1), and
2 409.102 (1) (intro.); and ~~to create~~ 16.519, 16.63, 20.505 (1) (dm), 20.876, 25.14
3 (1) (a) 15., 25.17 (1) (kr), 25.17 (5m), 25.17 (16), 25.66 (1m), 25.69, 231.01 (11),
4 231.01 (12), 231.03 (6) (g), 231.03 (20), 231.215 and 895.11 of the statutes;
5 relating to: the sale of the state's right to receive payments under the
6 Attorneys General Master Tobacco Settlement Agreement of November 23,
7 1998; authorizing the Wisconsin Health and Educational Facilities Authority
8 to purchase the state's right to receive such payments and to issue bonds for the
9 purchase; and making an appropriation.

STATE GOVERNMENT ← head
STATE FINANCE ← sub

Analysis by the Legislative Reference Bureau

On November 23, 1998, Wisconsin and other states agreed to a settlement of lawsuits brought against the major U.S. tobacco product manufacturers (the tobacco settlement agreement). Under the tobacco settlement agreement, the state is to receive annual payments from the U.S. tobacco product manufacturers in perpetuity. This bill authorizes the secretary of administration to sell the state's right to receive payments under the tobacco settlement agreement and provides that the proceeds from this sale are to be deposited in the permanent fund, a nonlapsible trust fund created in the bill.

enclosure

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enclosure

Under the bill, annually, the secretary of administration must transfer a certain amount of moneys in the permanent ~~trust~~ fund to the general fund according to a calculation made by the investment board. The amount available for transfer in each year, as calculated by the investment board, beginning in 2004, must equal the sum of the following:

1. An amount that equals 8.5% of the market value of the investments in the permanent fund on July 1.
2. All proceeds of, and investment earnings on, investments of the permanent fund made at the direction of the secretary of administration that are received in the ~~preceding~~ fiscal year.
3. All other amounts identified by the secretary of administration as payments of residual interests to the state from the sale of the state's right to receive moneys under tobacco settlement agreement that are received in the ~~preceding~~ fiscal year.

The bill provides that the investment board must invest the assets of the permanent fund in any investment that is an authorized investment for assets in the fixed retirement investment trust and the variable retirement trust. In addition, the bill requires the investment board to invest certain of the assets in the permanent fund according to the terms and conditions specified by the secretary of administration; the bill specifically provides that the investment board is not subject to its statutory standard of responsibility when it makes such an investment.

For 2002 and 2003, the amount that is required to be transferred from the permanent ~~trust~~ fund to the general fund is the amount that the state would have received as payments under the tobacco settlement agreement had the state's right to receive the payments not been sold. *requires*

The bill also ~~provides~~ that, in fiscal years 2001-02 and 2002-03, the first ~~\$23,500,000~~ in payments from the tobacco settlement agreement are deposited in the tobacco control fund and are appropriated to the tobacco control board for distribution to specific smoking cessation and prevention programs and for grants for smoking cessation education, research, and enforcement programs. In the event that the state's right to receive payments under the tobacco settlement agreement is sold before the ~~first \$23,500,000 is~~ received in fiscal years 2001-02, the bill requires that a necessary amount be transferred from the general fund to the tobacco control fund to make up any shortfall. *required amounts are*

The bill also authorizes the secretary of administration to organize one or more nonstock corporations or limited liability companies for any purpose related to the sale of the state's right to receive payments under the tobacco settlement agreement.

The bill provides that, with certain exceptions, this state's version of Article 9 of the Uniform Commercial Code governs the ~~sale, assignment, and transfer of payments under the tobacco settlement agreement and the granting and enforcing of interests in those payments.~~ Article 9 generally governs similar transactions. Under the bill, if a person obtains, evidences, and provides notice of an interest in the tobacco settlement agreement payments under the procedure specified in the bill, that interest is enforceable against the debtor, any assignee or grantee, and all third parties, including creditors under any lien obtained by judicial proceedings. In addition, the interest is superior to all other liens against the tobacco settlement

The bill establishes the legal characteristics of any sale, assignment, or transfer of payments under the tobacco settlement agreement. In addition,

\$12,065,200 and \$21,228,000 respectively

security

b3

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agreement payments that arise after the date on which the interest attaches to those payments.

Currently, ~~(the department of administration)~~ (DOA) is required, subject to numerous exceptions, to make purchases by solicitation of bids or competitive sealed proposals preceded by public notice. DOA must prepare written justification of contractual service procurements and must comply with rules regarding conflicts of interest between contractors and DOA employees. DOA must also attempt to ensure that a specified portion of its procurement business is awarded to minority-owned businesses. This bill exempts contracts entered into by DOA to provide financial services in relation to this state's interest in the tobacco settlement agreement payments from compliance with these requirements.

Currently, with certain exceptions, no person may commence a legal action against the state unless the person presents a claim to the claims board for a recommendation and the legislature denies the claim. This bill exempts claims presented in relation to this state's interest in the tobacco settlement agreement payments from compliance with this requirement.

Under current law, the Wisconsin Health and Educational Facilities Authority (WHEFA) may issue bonds to finance certain projects of health or educational facilities, such as the construction or remodeling of a health or educational facility or related structure, and to refinance outstanding debt of health or educational facilities. Under this bill, WHEFA is authorized to purchase the state's right to receive payments under the tobacco settlement agreement, to make a loan that is secured by the state's right to receive those payments, and to issue bonds to finance the purchase or to make the loan. Any bonds issued to finance the purchase or to make the loan must be payable from, or secured by interests in, the payments under the tobacco settlement agreement. In addition, WHEFA is authorized to organize one or more nonstock corporations or limited liability companies for any purpose related to the purchase of the state's right to receive payments under the tobacco settlement agreement.

This bill affirms the state's participation in the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998. In addition, the bill states that the payments received under that agreement are the property of the state, to be used as the state decides by law. The bill provides that no political subdivision of the state, or officer or agent of a political subdivision, may maintain a claim against any party that was released from liability by the state under the agreement. The bill also provides that no political subdivision of the state, or officer or agent of a political subdivision, may maintain a claim against the state or any officer or agent of the state that seeks to avoid or limit the agreement.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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SECTION 1

1 SECTION 1. 16.519 of the statutes is created to read:

2 **16.519 Fund transfers relating to tobacco settlement agreement. (1)**

3 In this section, "tobacco settlement agreement" means the Attorneys General Master
4 Tobacco Settlement Agreement of November 23, 1998.

5 (2) Annually, ^{on June 15,} the secretary shall transfer from the permanent ^{endowment} fund to the
6 general fund an amount equal to the amount calculated by the investment board
7 under s. 25.17 (16).

8 (3) If the state has not received in fiscal year 2001-02 at least ^{\$12,065,200} ~~\$23,500,000~~
9 under the tobacco settlement agreement, because the secretary, under s. 16.63, has
10 sold the state's right to receive any of the payments under the tobacco settlement
11 agreement, the secretary shall transfer from the general fund to the tobacco control

12 fund an amount equal to ^{\$12,065,200} ~~\$23,500,000~~ less any payments received under the tobacco
13 settlement agreement and deposited in the tobacco control fund in that fiscal year.

14 (4) If the state has not received in fiscal year 2002-03 at least ^{\$21,228,000} ~~\$23,500,000~~
15 under the tobacco settlement agreement, because the secretary, under s. 16.63, has
16 sold the state's right to receive any of the payments under the tobacco settlement
17 agreement, the secretary shall transfer from the general fund to the tobacco control

18 fund an amount equal to ^{\$21,228,000} ~~\$23,500,000~~ less any payments received under the tobacco
19 settlement agreement and deposited in the tobacco control fund in that fiscal year.

20 SECTION 2. 16.63 of the statutes is created to read:

21 **16.63 Sale of state's rights to tobacco settlement agreement payments.**

22 (1) In this section:

23 (a) "Purchaser" means any person who has purchased the state's right to
24 receive any of the payments under the tobacco settlement agreement.

BILL

1 (b) "Tobacco settlement agreement" means the Attorneys General Master
2 Tobacco Settlement Agreement of November 23, 1998.

3 (c) "Tobacco settlement revenues" means ~~all general intangibles consisting of~~
4 the right to receive settlement payments arising from or pursuant to the tobacco
5 settlement agreement and all direct or indirect proceeds of that ~~agreement~~ right

6 (2) The secretary may sell for cash or other consideration the state's right to
7 receive any of the payments under the tobacco settlement agreement.

8 (3) The secretary may organize one or more nonstock corporations under ch.
9 181 or limited liability companies under ch. 183 for any purpose related to the sale
10 of the state's right to receive any of the payments under the tobacco settlement
11 agreement and may take any action necessary to facilitate and complete the sale.

12 (4) (a) Tobacco settlement revenues may not be deemed proceeds of any
13 property which is not tobacco settlement revenues. creation

14 (b) Except as otherwise provided in this subsection, ~~the sale, transfer, and~~
15 ~~assignment of tobacco settlement revenues and the granting,~~ creation perfection, and
16 enforcement of ~~ownership interests and~~ security interests in tobacco settlement
17 revenues are governed by ch. 409. Notwithstanding ch. 409, with regard to creating,
18 perfecting, and enforcing a valid security interest in tobacco settlement revenues:

19 1. If this state or the Wisconsin health and educational facilities authority is
20 the debtor in the transaction, the proper place to file the required financing
21 statement to perfect the security interest is the department of financial institutions.

22 2. The description of collateral in the required financing statement ~~is sufficient~~
23 shall describe if it describes the collateral as general intangibles consisting of the right to receive
24 settlement payments arising from or pursuant to the tobacco settlement agreement
25 and all proceeds of that ~~agreement~~ right

The description may include any additional information that describes the collateral in a legally sufficient manner that is legally sufficient under the laws of this state.

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3. Tobacco settlement revenues are general intangibles for purposes of ch. 409.

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1. A security interest perfected under this paragraph is enforceable against the debtor, any assignee or grantee, and all third parties, including creditors under any lien obtained by judicial proceedings, subject only to the rights of any third parties holding security interests in the tobacco settlement revenues previously perfected under this paragraph. Unless the applicable security agreement provides otherwise, a perfected security interest in the tobacco settlement revenues is a continuously perfected security interest in all tobacco settlement revenues existing on the date of the agreement or arising after the date of the agreement. A security interest perfected under this paragraph has priority over any other lien, including any lien obtained by judicial proceedings, which subsequently attaches to the tobacco settlement revenues.

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2. The priority of a security interest created under this paragraph is not affected by the commingling of proceeds arising from the tobacco settlement revenues with other amounts.

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(c) 1. ~~sale, assignment, or other transfer of any tobacco settlement revenues~~ *The sale, assignment, and transfer of tobacco settlement revenues are governed by this paragraph. All of the following apply to a sale, assignment, or transfer under this paragraph: (1) sale, assignment, or other transfer of any tobacco settlement revenues* is an absolute transfer of ~~the seller's right, title, and interest in, to, and under the~~ *the* tobacco settlement revenues, if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. After such a transaction, the tobacco settlement revenues are not subject to any claims of the seller or the seller's creditors, *and not a pledge or secured transaction relating to,* *other than creditors holding a prior security interest in the tobacco settlement revenues previously perfected under sub. (4) (b) 2.*

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4. ~~The characterization of any transfer as an absolute transfer under subd. 1. may be considered in determining whether the transfer is deemed to be a sale for tax purposes.~~ *not* *The sale, assignment, or* *sale, assignment, or*

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5. The characterization of transfer as an absolute transfer under subd. 1 and the corresponding characterization of the purchaser's property interest is not

Nothing in this subsection precludes consideration of the factors listed in subd. 2. a. to c. in determining whether the sale, assignment, or transfer is a sale for tax purposes.

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any of following factors: P a.

amounts

1 affected by the commingling of proceeds arising with respect to the tobacco
 2 settlement revenues with other amounts, the retention by the seller of a partial or
 3 residual interest, including an equity interest, in the tobacco settlement revenues,
 4 whether direct or indirect, or whether subordinate or otherwise, the sale of only a
 5 portion of the tobacco settlement revenues or an undivided interest in the tobacco
 6 settlement revenues, any recourse that the purchaser or its assignees may have
 7 against the seller, whether the seller is responsible for collecting payments due
 8 under the tobacco settlement revenues or for otherwise enforcing any of the tobacco
 9 settlement revenues or retains legal title to the tobacco settlement revenues for the
 10 purpose of these collection activities, and the treatment of the transfer for tax
 11 purposes. A sale, assignment, or other transfer of tobacco settlement revenues that
 12 is deemed perfected automatically as against third parties, including any judicial
 13 lien creditors, upon attachment. under ch. 409

Insert from 6-21

14 (5) If the secretary sells the state's right to receive any of the payments under
 15 the tobacco settlement agreement, the state pledges to and agrees with any
 16 purchaser or subsequent transferee of the state's right to receive any of the payments
 17 under the tobacco settlement agreement that the state will not limit or alter its
 18 powers to fulfill the terms of the tobacco settlement agreement, nor will the state in
 19 any way impair the rights and remedies provided under the tobacco settlement
 20 agreement. The state also pledges to and agrees with any purchaser or subsequent
 21 transferee of the state's right to receive any of the payments under the tobacco
 22 settlement agreement that the state will pay all costs and expenses in connection
 23 with any action or proceeding brought by or on behalf of the purchaser or any
 24 subsequent transferee related to the state's not fulfilling the terms of the tobacco

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1 settlement agreement. The secretary may include this pledge and agreement of the
2 state in any contract that is entered into by the secretary under this section.

3 (6) If the secretary sells the state's right to receive any of the payments under
4 the tobacco settlement agreement, the state pledges to and agrees with any
5 purchaser or subsequent transferee of the state's right to receive any of the payments
6 under the tobacco settlement agreement that the state will not limit or alter the
7 powers of the secretary under this section until any contract that is entered into
8 under this section is fully performed, unless adequate provision is made by law for
9 the protection of the rights and remedies of the purchaser or any subsequent
10 transferee under the contract. The secretary may include this pledge and agreement
11 of the state in any contract that is entered into by the secretary under this section.

12 (7) The secretary may enter into a contract with any firm or individual engaged
13 in providing financial services for the performance of any of his or her functions
14 under this section, using selection and procurement procedures established by the
15 secretary. That contract is not subject to s. 16.705 or 16.75.

16 (8) This subsection ^{and subs. (8m) and (9)} shall govern all civil claims, suits, proceedings, and actions
17 ^{brought} against the state relating to the sale of the state's right to receive any of the payments
18 under the tobacco settlement agreement. If the state fails to comply with this section
19 or the terms of any agreement relating to the sale of the state's right to receive any
20 of the payments under the tobacco settlement agreement, an action to compel
21 compliance may be commenced against the state.

22 (8m) If the recovery of a money judgment against the state is necessary to give
23 the plaintiff in an action under sub. (8) complete relief, a claim for the money
24 damages may be joined with the claim commenced under sub. (8).

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(9) Sections 16.007 and 775.01 do not apply to claims against the state under sub. (8). If there is a final judgment against the state in such an action, the judgment shall be paid as provided in s. 775.04 together with interest at the rate of 10% per year from the date such payment was judged to have been due until the date of payment. of the judgment

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SECTION 3. 20.505 (1) (dm) of the statutes is created to read:

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20.505 (1) (dm) *Sale of tobacco settlement payments.* A sum sufficient to pay the costs incurred by the secretary of administration in any sale of the state's right to receive any of the payments under the tobacco settlement agreement under s. 16.63 (2) and in organizing ^{and initially capitalizing} any corporation or company under s. 16.63 (3).

NOTE: BUD

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SECTION 4. 20.876 of the statutes is created to read:

20.876 Permanent fund. (1) TRANSFERS FROM FUND. There is appropriated from the permanent ^{endowment} fund to the general fund:

(a) *Permanent fund transfer to general fund.* A sum sufficient equal to the amount that is required to be transferred to the general fund under s. 16.519 (2).

NOTE: BUD

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SECTION 5. 25.14 (1) (a) 15. of the statutes is created to read:

25.14 (1) (a) 15. The permanent ^{endowment} fund.

SECTION 6. 25.15 (2) (intro.) of the statutes is amended to read:

25.15 (2) STANDARD OF RESPONSIBILITY. (intro.) The Except as provided in s. 25.17 (5m) (b), the standard of responsibility applied to the board when it invests money or property shall be all of the following:

SECTION 7. 25.17 (1) (kr) of the statutes is created to read:

25.17 (1) (kr) Permanent ^{endowment} fund (s. 25.69);

SECTION 8. 25.17 (5m) of the statutes is created to read:

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SECTION 8

endowment

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25.17 (5m) (a) Invest any of the assets of the permanent fund in any investment that is an authorized investment for assets in the fixed retirement investment trust under sub. (4) or assets in the variable retirement investment trust under sub. (5).

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(b) 1. If directed by the secretary of administration, invest any of the assets in the permanent fund in any of the following:

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a. Evidences of indebtedness, including subordinated obligations, that are secured by tobacco settlement revenues, as defined in s. 16.63 (1) (c), and that are issued by a corporation or company established under s. 16.63 (3) or 231.215 or by the Wisconsin health and educational facilities authority.

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b. Certificates or other evidences of ownership interest in all or any portion of tobacco settlement revenues, as defined in s. 16.63 (1) (c).

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2. If directed by the secretary of administration to make the investments under subd. 1., the board shall invest the assets under that subdivision subject to any terms and conditions specified by the secretary and shall not be subject to the standard of responsibility under s. 25.15 (2).

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SECTION 9. 25.17 (16) of the statutes is created to read:

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25.17 (16) (a) Annually, after ~~July 1~~ *June 1* but not later than ~~December 31~~ *June 15*, calculate the amount of moneys that are available in the permanent fund for transfer to the general fund under s. 16.519. For the purpose of this calculation, moneys that are available in the permanent fund for transfer to the general fund shall equal the following:

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1. In 2002, an amount equal to the tobacco settlement revenues, as specified in s. 20.005 (1) of the summary schedule of the biennial budget act or acts, less any payments under the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998, that are received by the state in fiscal year 2001-02.

June 1 but not later than June 15

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1 2. In 2003, an amount equal to the tobacco settlement revenues, as specified
2 in s. 20.005 (1) of the summary schedule of the biennial budget act or acts, less any
3 payments under the Attorneys General Master Tobacco Settlement Agreement of
4 November 23, 1998, that are received by the state in fiscal year 2002-⁰/~~13~~.

5 3. In 2004, and each year thereafter, the sum of the following:

6 a. An amount that equals 8.5% of the market value of the investments in the
7 permanent fund on ~~July 1~~ ^{June 1} of that year.

For the purpose of making the calculation under subd. 3.a., the board shall not include any amounts specified in subd. 3.b. and 3.c.

8 b. All proceeds of, and investment earnings on, investments of the permanent
9 fund made at the direction of the secretary of administration under s. 25.17 (5m) (b)
10 that are received in the ~~preceding~~ ^{preceding} fiscal year.

11 c. All other amounts identified by the secretary of administration as payments
12 of residual interests to the state from the sale of the state's right to receive payments
13 under the Attorneys General Master Tobacco Settlement Agreement of November
14 23, 1998, that are received in the ~~preceding~~ ^{preceding} fiscal year.

15 (b) Annually, submit to the secretary of administration and to the chief clerk
16 of each house, for distribution to the appropriate standing committees under s.
17 13.172 (3), a report specifying the amount of moneys that are available in the
18 permanent fund for transfer to the general fund under s. 16.519.

19 **SECTION 10.** 25.66 (1) of the statutes is amended to read:

20 25.66 (1) There is created a separate nonlapsible trust fund, known as the
21 tobacco control fund, to consist of, in fiscal year ~~1999-2000~~ years 2001-02 and
22 2002-03, the first \$23,500,000 of the moneys received under the Attorneys General
23 Master Tobacco Settlement Agreement of November 23, 1998, in each of the fiscal
24 years, except as provided in sub. (1m).

25 **SECTION 11.** 25.66 (1m) of the statutes is created to read:

(this)

endowment

(this)

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SECTION 11

1 25.66 (1m) If the state has not received in fiscal years 2001–02 and 2002–03
2 at least \$23,500,000 under the Attorneys General Master Tobacco Settlement
3 Agreement of November 23, 1998, because the secretary of administration, under s.
4 16.63, has sold the state's right to receive payments under the Agreement, the
5 tobacco control fund shall also consist of any moneys transferred to the tobacco
6 control fund from the general fund under 16.519 (3) and (4).

7 SECTION 12. 25.69 of the statutes is created to read:

8 25.69 Permanent ~~fund~~. There is established a separate nonlapsible trust
9 fund designated as the permanent fund, consisting of all of the proceeds from the sale
10 of the state's right to receive payments under the Attorneys General Master Tobacco
11 Settlement Agreement of November 23, 1998, and all investment earnings on the
12 proceeds. Moneys in the permanent fund shall be used only to make the transfers
13 required under s. 16.519 (2) ~~and shall otherwise be preserved in perpetuity as a~~
14 ~~permanent fund for the benefit of the people of this state.~~

15 SECTION 13. 231.01 (9) of the statutes is amended to read:

16 231.01 (9) "Revenues" means, with respect to any project, the rents, fees,
17 charges, and other income or profit derived therefrom and, with respect to any bonds
18 issued under s. 231.03 (6) (g), tobacco settlement revenues identified in the bond
19 resolution.

20 SECTION 14. 231.01 (11) of the statutes is created to read:

21 231.01 (11) "Tobacco settlement agreement" has the meaning given in s. 16.63
22 (1) (b).

23 SECTION 15. 231.01 (12) of the statutes is created to read:

24 231.01 (12) "Tobacco settlement revenues" has the meaning given in s. 16.63
25 (1) (c).

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1 **SECTION 16.** 231.03 (6) (g) of the statutes is created to read:

2 231.03 (6) (g) Finance a purchase, or make a loan, under sub. (20). Bonds
3 issued under this paragraph shall be payable from, or secured by interests in, tobacco
4 settlement revenues and such other property pledged under the bond resolution and,
5 notwithstanding s. 231.08 (3), are not required to mature in 30 years or less from the
6 date of issue.

7 **SECTION 17.** 231.03 (20) of the statutes is created to read:

8 231.03 (20) Purchase the state's right to receive any of the payments under the
9 tobacco settlement agreement, or make a loan to be secured by the state's right to
10 receive any of the payments under the tobacco settlement agreement, upon such
11 terms and at such prices as the authority considers reasonable and as can be agreed
12 upon between the authority and the other party to the transaction. The authority
13 may issue certificates or other evidences of ownership interest in tobacco settlement
14 revenues upon such terms and conditions as specified by the authority in the
15 resolution under which the certificates or other evidences are issued or in a related
16 trust agreement or trust indenture.

17 **SECTION 18.** 231.09 of the statutes is amended to read:

18 **231.09 Bond security.** The authority may secure any bonds issued under this
19 chapter by a trust agreement, trust indenture, indenture of mortgage, or deed of
20 trust by and between the authority and one or more corporate trustees, which may
21 be any trust company or bank ~~in this state~~ having the powers of a trust company. The
22 bond resolution providing for the issuance of bonds so secured shall pledge the
23 revenues to be received by the authority as a result of the terms of the financing
24 referred to in the resolution, and may contain such provisions for protecting and
25 enforcing the rights and remedies of the bondholders as are reasonable and proper

BILL

SECTION 18

1 and not in violation of law, including particularly such provisions as are specifically
2 authorized by this chapter to be included in any bond resolution of the authority, and
3 may restrict the individual right of action by bondholders. In addition, any bond
4 resolution may contain such other provisions as the authority deems reasonable and
5 proper for the security of the bondholders. All expenses incurred in carrying out the
6 provisions of the bond resolution may be treated as a part of the cost of the operation
7 of a project.

8 **SECTION 19.** 231.16 (1) of the statutes is amended to read:

9 231.16 (1) The authority may issue bonds to refund any outstanding bond of
10 the authority or indebtedness that a participating health institution, participating
11 educational institution, or participating child care provider may have incurred for
12 the construction or acquisition of a project prior to or after April 30, 1980, including
13 the payment of any redemption premium on the outstanding bond or indebtedness
14 and any interest accrued or to accrue to the earliest or any subsequent date of
15 redemption, purchase, or maturity, or to pay all or any part of the cost of constructing
16 and acquiring additions, improvements, extensions, or enlargements of a project or
17 any portion of a project. No Except for bonds to refund bonds issued under s. 231.03
18 (6) (g), no bonds may be issued under this section unless the authority has first
19 entered into a new or amended agreement with a participating health institution,
20 participating educational institution, or participating child care provider to provide
21 sufficient revenues to pay the costs and other items described in s. 231.13.

Insert 14-21

22 **SECTION 20.** 231.215 of the statutes is created to read:

23 **231.215 Incorporator for purpose related to purchase of right to**
24 **payments.** The authority, or its executive director, may organize one or more
25 nonstock corporations under ch. 181 or limited liability companies under ch. 183 for

BILL

or selling

1 any purpose related to purchasing the state's right to receive any of the payments
2 under the tobacco settlement agreement and may take any action necessary to
3 facilitate and complete the purchase. *or sale*

4 **SECTION 21.** 409.102 (1) (intro.) of the statutes is amended to read:

5 409.102 (1) (intro.) Except as otherwise provided in s. 409.104 on excluded
6 transactions and s. 16.63 (4) ~~and on~~ *on* transactions involving tobacco settlement
7 revenues, this chapter applies:

8 **SECTION 22.** 895.11 of the statutes is created to read:

9 **895.11 Payments under the tobacco settlement agreement.** (1) In this
10 section, "tobacco settlement agreement" means the Attorneys General Master
11 Tobacco Settlement Agreement ~~entered into on~~ *of* November 23, 1998 ~~by this state and~~
12 ~~the leading U.S. tobacco product manufacturers.~~

13 (2) The state's participation in the tobacco settlement agreement is affirmed.

14 (3) All payments received and to be received *by the state* under the tobacco settlement
15 agreement are the property of the state, to be used as provided by law, including a
16 sale of the *right to receive the* payments under s. 16.63. No political subdivision of the state, and no
17 officer or agent of any political subdivision of the state, shall have or seek to maintain
18 any *claim related to* of the following:

19 (a) A claim against any party that was released from liability by the state under
20 the tobacco settlement agreement.

21 (b) A claim against the state or any officer or agent of the state that seeks to
22 avoid or limit the tobacco settlement agreement.

23 (END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1528/2ins
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INSERT 14-21

1 SECTION 1. 231.16 (3) of the statutes is amended to read:
2 231.16 (3) All bonds issued under this section shall be subject to this chapter
3 in the same manner and to the same extent as other bonds issued pursuant to this
4 chapter, except that the limitations with respect to dates under s. 231.03 (6) (e) and
5 (f) and (14) do not apply to bonds issued under this section, and the requirement
6 under s. 231.08 (3) that the bonds mature in 30 years or less from their date of issue
7 does not apply to bonds issued under this section to refund bonds issued under s.
8 231.03 (6) (g).

History: 1973 c. 304; 1979 c. 221; 1987 a. 27; 1993 a. 124.

(END OF INSERT 14-21)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1528/2dn
BC/PK/RM/JTK/RN:cjs:pg

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stays

11/30/2001
Spoke w/
Frank
Hoadley on
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NO problem
RAC

Frank Hoadley:

I put in the June 1 proposed valuation date for the various transfers. I wonder, however, if the date should actually be June 30. The reason is that the June 1 valuation date will not capture tobacco settlement payments that might be received between June 2 and June 30 and any investment returns that are realized between June 2 and June 30.

Rick A. Champagne
Senior Legislative Attorney
Phone: (608) 266-9930
E-mail: rick.champagne@legis.state.wi.us

JTK
D-Note →

PJK
D-Note →

RPN
D-Note →

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1528/2dnJTK
JTK.....

JTK D-Note

o In proposed s. 16.63 (9), I have exempted judgments from routine audit by DOA. It does seem to me that the routine audit is consistent, however, with the audit called for under s. 775.04, stats., which is referenced in this subsection.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1528/2dn
PJK.gjs.pg

PJK
D-NOB

I have not changed the various references in ch. 231 to "bonds issued under s. 231.03 (6) (g)" to "bonds issued for the purpose under s. 231.03 (6) (g)." (Bonds *are* issued under s. 231.03 (6); read the language of s. 231.03 (intro.) and (6) (intro.)) Although either phrase is accurate, I think it is more direct, and therefore easier to understand, to say that the bonds are issued under s. 231.03 (6) (g), rather than for the purpose described in s. 231.03 (6) (g). See s. 231.03 (14) for another example of bonds being "issued under s. 231.03 (6)."

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1528/2dnrpn
RC/PK/RM/JTK/RN:cjs:pg

RPN ~~D~~-NOTE

I made most of the changes suggested, except:

1. I will not add the language "notwithstanding any contrary provisions of the statutes" for the reasons given in my last note and because the joint rules specifically require that an amendment that "...proposes to amend an existing law... shall display the full text of the unit of the law... that is being amended." Having an error in current law is not a reason for compounding that error. Perhaps the current language was included before the joint rules prohibited that language.

2. I will not add the duplicative language about service and venue. We have that exact same language in current law where it belongs, in the civil procedure statutes. Adding this language, without adding all the other civil procedure requirements, such as the contents of the summons and complaint, causes confusion. Again, perhaps when the current language was added the person who added it was unaware of the civil procedure sections of the statutes. But another error in the statutes is not the solution.

3. In s. 16.63 (8m) you correctly suggested that the cross reference to sub. (7) be changed to sub. (8) because sub. (8) is the subsection that establishes the right of a party to bring an action against the state if the state fails to comply with the terms of the agreement. However, you later suggest that the cross reference to sub. (8) be changed to sub. (8m) in sub. (9) of section 16.63. I did not make that change because the cross reference in sub. (9) is to claims against the state, and sub. (8m) refers to "claims commenced under sub. (8)," so the correct cross reference is to sub. (8), not sub. (8m). Perhaps the cross reference in sub. (9) should be: "under this subsection and subs. (8) and (8m)."

5. If you are concerned about how a court will interpret the removal of this inappropriate language from your draft, the copy of this and of my previous drafter's note regarding these issues will be part of the drafting file. A court can read the drafting file and ascertain that no substantive change was intended by these changes.

4. See my change in s. 895.11 (3) of the bill. I think it does what you want without causing the problem we have regarding suits against the state by its political subdivisions discussed in my earlier D-note.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1528/2dn
JTK/PJK/RPN:cjs:pg

January 30, 2001

In proposed s. 16.63 (9), I have exempted judgments from routine audit by DOA. It does seem to me that the routine audit is consistent, however, with the audit called for under s. 775.04, stats., which is referenced in this subsection.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

I have not changed the various references in ch. 231 to "bonds issued under s. 231.03 (6) (g)" to "bonds issued for the purpose under s. 231.03 (6) (g)." (Bonds *are* issued under s. 231.03 (6); read the language of s. 231.03 (intro.) and (6) (intro.)) Although either phrase is accurate, I think it is more direct, and therefore easier to understand, to say that the bonds are issued under s. 231.06 (6) (g), rather than for the purpose described in s. 231.03 (6) (g). See s. 231.03 (14) for another example of bonds being "issued under s. 231.03 (6)."

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

I made most of the changes suggested, except:

1. I will not add the language "notwithstanding any contrary provisions of the statutes" for the reasons given in my last note and because the joint rules specifically require that an amendment that "...proposes to amend an existing law... shall display

the full text of the unit of the law... that is being amended...". Having an error in current law is not a reason for compounding that error. Perhaps the current language was included before the joint rules prohibited that language.

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3. In s. 16.63 (8m) you correctly suggested that the cross-reference to sub. (7) be changed to sub. (8) because sub. (8) is the subsection that establishes the right of a party to bring an action against the state if the state fails to comply with the terms of the agreement. However, you later suggest that the cross-reference to sub. (8) be changed to sub. (8m) in sub. (9) of section 16.63. I did not make that change because the cross-reference in sub. (9) is to claims against the state, and sub. (8m) refers to "...claims commenced under sub. (8)," so the correct cross-reference is to sub. (8), not sub. (8m). Perhaps the cross-reference in sub. (9) should be..."under this subsection and subs. (8) and (8m)."

4. See my change in s. 895.11 (3) of the bill. I think it does what you want without causing the problem we have regarding suits against the state by its political subdivisions discussed in my earlier D-note.

5. If you are concerned about how a court will interpret the removal of this inappropriate language from your draft, the copy of this and of my previous drafter's note regarding these issues will be part of the drafting file. A court can read the drafting file and ascertain that no substantive change was intended by these changes.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

Champagne, Rick

From: Hoadley, Frank
Sent: Wednesday, January 31, 2001 11:06 AM
To: Champagne, Rick
Subject: RE:

Rick -

See my suggestion in the attachment below (at least the idea).

Frank



tobacco 1-31-01.doc

-----Original Message-----

From: Champagne, Rick
Sent: Wednesday, January 31, 2001 8:49 AM
To: Hoadley, Frank
Subject:

Frank --

Here is the language I am working on for the appropriations. What do you think?

Section 1. 20.876 of the statutes is created to read:

20.876 Permanent endowment fund. (1) Transfers from fund. There is appropriated from the permanent endowment fund to the general fund:

(a) *Transfer to general fund.* The amounts in the schedule to be transferred to the general fund no later than June 30 of each fiscal year.

(b) *Transfer to general fund based on market value of investments, earnings on investments, and payments of residual interests.* A sum sufficient equal to the amount that is required to be transferred to the general fund under s. 16.519 (2).

(c) *Transfer to general fund; 2001-02 fiscal year.* The amounts in the schedule to be transferred to the general fund no later than June 30 of each fiscal year, except that the amounts in the schedule shall be reduced by any payments under the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998, that are received by the state in fiscal year 2001-02.

(d) *Transfer to general fund; 2002-03 fiscal year.* The amounts in the schedule to be transferred to the general fund no later than June 30 of each fiscal year, except that the amounts in the schedule shall be reduced by any payments under the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998, that are received by the state in fiscal year 2002-03.

Rick

Section 1. 20.876 of the statutes is created to read:

20.876 Permanent endowment fund. (1) Transfers from fund. There is appropriated from the permanent endowment fund to the general fund:

(a) *Transfer to general fund.* Subject to completion of a sale under s. 16.53, following completion of such sale, the The amounts in the schedule to be transferred to the general fund ~~no later than June 30 of each fiscal year during the 2001-03 biennium.~~

(b) *Transfer to general fund based on market value of investments, earnings on investments, and payments of residual interests.* Beginning in fiscal year 2003-04, A sum sufficient equal to the amount that is required to be transferred to the general fund under s. 16.519 (2).

(c) *Transfer to general fund; 2001-02 fiscal year.* The amounts in the schedule to be transferred to the general fund no later than June 30 of each fiscal year, except that the amounts in the schedule shall be reduced by any payments under the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998, that are received by the state in fiscal year 2001-02.

(d) *Transfer to general fund; 2002-03 fiscal year.* The amounts in the schedule to be transferred to the general fund no later than June 30 of each fiscal year, except that the amounts in the schedule shall be reduced by any payments under the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998, that are received by the state in fiscal year 2002-03.

Per Frank,
Repeal (a), (c), & (d)
as of basic
my language.
7/1/2003. Keep

Champagne, Rick

From: Reicher, David M. [dreicher@foleylaw.com]
Sent: Wednesday, January 31, 2001 12:16 PM
To: 'Champagne, Rick'
Subject: RE:

Rick:

Pam will not hear from us. If you have Bob's comments, please send the revised version. I am still looking at some of the changes, but I don't think I will have many, if any, more comments. In any event, it will be helpful to consolidate any I may have with what I may have after seeing the new version changes.

David M. Reicher

Foley & Lardner
777 E. Wisconsin Avenue
Milwaukee, WI 53202
(414) 297-5763 (phone)
(414) 297-4900 (fax)
dreicher@foleylaw.com

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> -----Original Message-----

> From: Champagne, Rick [SMTP:Rick.Champagne@legis.state.wi.us]
> Sent: Wednesday, January 31, 2001 12:04 PM
> To: Hoadley, Frank; 'dreicher@foleylaw.com'
> Cc: Kahler, Pam
> Subject:
>
> Frank/David:
>
> I've incorporated the appropriation structure changes we discussed and Bob
> Nelson has given me his changes that he worked out with Foley. Pam Kahler
> has yet to hear on her comments. Should I roll the next version or will
> Pam
> be hearing from either of you.
>
> Rick



Today, of possible

DOA:.....Currier – Tobacco securitization

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

Do NOT GO

1 **AN ACT** ...; relating to: the sale of the state's right to receive payments under the
 2 Attorneys General Master Tobacco Settlement Agreement of November 23,
 3 1998; authorizing the Wisconsin Health and Educational Facilities Authority
 4 to purchase the state's right to receive such payments and to issue bonds for the
 5 purchase; and making an appropriation.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE FINANCE

On November 23, 1998, Wisconsin and other states agreed to a settlement of lawsuits brought against the major U.S. tobacco product manufacturers (the tobacco settlement agreement). Under the tobacco settlement agreement, the state is to receive annual payments from the U.S. tobacco product manufacturers in perpetuity. This bill authorizes the secretary of administration to sell the state's right to receive payments under the tobacco settlement agreement and provides that the proceeds from this sale are to be deposited in the permanent endowment fund, a nonlapsible trust fund created in the bill.

Under the bill, annually, the secretary of administration must transfer a certain amount of moneys in the permanent endowment fund to the general fund

according to a calculation made by the investment board. The amount available for transfer in each year, as calculated by the investment board, beginning in 2004, must equal the sum of the following:

1. An amount that equals 8.5% of the market value of the investments in the permanent endowment fund on July 1.
2. All proceeds of, and investment earnings on, investments of the permanent endowment fund made at the direction of the secretary of administration that are received in the fiscal year.
3. All other amounts identified by the secretary of administration as payments of residual interests to the state from the sale of the state's right to receive moneys under tobacco settlement agreement that are received in the fiscal year.

The bill provides that the investment board must invest the assets of the permanent endowment fund in any investment that is an authorized investment for assets in the fixed retirement investment trust and the variable retirement trust. In addition, the bill requires the investment board to invest certain of the assets in the permanent endowment fund according to the terms and conditions specified by the secretary of administration; the bill specifically provides that the investment board is not subject to its statutory standard of responsibility when it makes such an investment.

For 2002 and 2003, the amount that is required to be transferred from the permanent endowment fund to the general fund is the amount that the state would have received as payments under the tobacco settlement agreement had the state's right to receive the payments not been sold.

The bill also requires that, in fiscal years 2001-02 and 2002-03, the first \$12,065,200 and \$21,228,000, respectively, in payments from the tobacco settlement agreement are deposited in the tobacco control fund and are appropriated to the tobacco control board for distribution to specific smoking cessation and prevention programs and for grants for smoking cessation education, research, and enforcement programs. In the event that the state's right to receive payments under the tobacco settlement agreement is sold before the required amounts are received in fiscal years 2001-03, the bill requires that a necessary amount be transferred from the general fund to the tobacco control fund to make up any shortfall.

The bill also authorizes the secretary of administration to organize one or more nonstock corporations or limited liability companies for any purpose related to the sale of the state's right to receive payments under the tobacco settlement agreement.

The bill establishes the legal characteristics of any sale, assignment, or transfer of payments under the tobacco settlement agreement. In addition, the bill provides that, with certain exceptions, this state's version of Article 9 of the Uniform Commercial Code governs the granting and enforcing of security interests in those payments. Article 9 generally governs similar transactions. Under the bill, if a person obtains, evidences, and provides notice of an interest in the tobacco settlement agreement payments under the procedure specified in the bill, that interest is enforceable against the debtor, any assignee or grantee, and all third parties, including creditors under any lien obtained by judicial proceedings. In addition, the interest is superior to all other liens against the tobacco settlement

and appropriates money for the organization and initial capitalization of the corporation or company

agreement payments that arise after the date on which the interest attaches to those payments.

Currently, DOA is required, subject to numerous exceptions, to make purchases by solicitation of bids or competitive sealed proposals preceded by public notice. DOA must prepare written justification of contractual service procurements and must comply with rules regarding conflicts of interest between contractors and DOA employees. DOA must also attempt to ensure that a specified portion of its procurement business is awarded to minority-owned businesses. This bill exempts contracts entered into by DOA to provide financial services in relation to this state's interest in the tobacco settlement agreement payments from compliance with these requirements.

Currently, with certain exceptions, no person may commence a legal action against the state unless the person presents a claim to the claims board for a recommendation and the legislature denies the claim. This bill exempts claims presented in relation to this state's interest in the tobacco settlement agreement payments from compliance with this requirement.

Under current law, the Wisconsin Health and Educational Facilities Authority (WHEFA) may issue bonds to finance certain projects of health or educational facilities, such as the construction or remodeling of a health or educational facility or related structure, and to refinance outstanding debt of health or educational facilities. Under this bill, WHEFA is authorized to purchase the state's right to receive payments under the tobacco settlement agreement, to make a loan that is secured by the state's right to receive those payments, and to issue bonds to finance the purchase or to make the loan. Any bonds issued to finance the purchase or to make the loan must be payable from, or secured by interests in, the payments under the tobacco settlement agreement. In addition, WHEFA is authorized to organize one or more nonstock corporations or limited liability companies for any purpose related to the purchase or sale of the state's right to receive payments under the tobacco settlement agreement.

This bill affirms the state's participation in the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998. In addition, the bill states that the payments received under that agreement are the property of the state, to be used as the state decides by law. The bill provides that no political subdivision of the state, or officer or agent of a political subdivision, may maintain a claim against any party that was released from liability by the state under the agreement. The bill also provides that no political subdivision of the state, or officer or agent of a political subdivision, may maintain a claim against the state or any officer or agent of the state that seeks to avoid or limit the agreement.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 16.519 of the statutes is created to read:

2 **16.519 Fund transfers relating to tobacco settlement agreement. (1)**

3 In this section, "tobacco settlement agreement" means the Attorneys General Master
4 Tobacco Settlement Agreement of November 23, 1998.

5 (2) Annually, on June 15, ^{beginning in 2004,} the secretary shall transfer from the permanent
6 endowment fund to the general fund an amount equal to the amount calculated by
7 the investment board under s. 25.17 (16).

8 (3) If the state has not received in fiscal year 2001–02 at least \$12,065,200
9 under the tobacco settlement agreement, because the secretary, under s. 16.63, has
10 sold the state's right to receive any of the payments under the tobacco settlement
11 agreement, the secretary shall transfer from the general fund to the tobacco control
12 fund an amount equal to \$12,065,200 less any payments received under the tobacco
13 settlement agreement and deposited in the tobacco control fund in that fiscal year.

14 (4) If the state has not received in fiscal year 2002–03 at least \$21,228,000
15 under the tobacco settlement agreement, because the secretary, under s. 16.63, has
16 sold the state's right to receive any of the payments under the tobacco settlement
17 agreement, the secretary shall transfer from the general fund to the tobacco control
18 fund an amount equal to \$21,228,000 less any payments received under the tobacco
19 settlement agreement and deposited in the tobacco control fund in that fiscal year.

20 **SECTION 2.** 16.63 of the statutes is created to read:

21 **16.63 Sale of state's rights to tobacco settlement agreement payments.**

22 (1) In this section:

23 (a) "Purchaser" means any person who has purchased the state's right to
24 receive any of the payments under the tobacco settlement agreement.

1 (b) “Tobacco settlement agreement” means the Attorneys General Master
2 Tobacco Settlement Agreement of November 23, 1998.

3 (c) “Tobacco settlement revenues” means the right to receive settlement
4 payments arising from or pursuant to the tobacco settlement agreement and all
5 direct or indirect proceeds of that right.

6 (2) The secretary may sell for cash or other consideration the state’s right to
7 receive any of the payments under the tobacco settlement agreement.

8 (3) The secretary may organize one or more nonstock corporations under ch.
9 181 or limited liability companies under ch. 183 for any purpose related to the sale
10 of the state’s right to receive any of the payments under the tobacco settlement
11 agreement and may take any action necessary to facilitate and complete the sale.

12 (4) (a) Tobacco settlement revenues may not be deemed proceeds of any
13 property which is not tobacco settlement revenues.

14 (b) Except as otherwise provided in this subsection, the creation, perfection,
15 and enforcement of security interests in tobacco settlement revenues are governed
16 by ch. 409. Notwithstanding ch. 409, with regard to creating, perfecting, and
17 enforcing a valid security interest in tobacco settlement revenues:

18 1. If this state or the Wisconsin health and educational facilities authority is
19 the debtor in the transaction, the proper place to file the required financing
20 statement to perfect the security interest is the department of financial institutions.

21 2. The description of collateral in the required financing statement shall
22 describe the collateral as general intangibles consisting of the right to receive
23 settlement payments arising from or pursuant to the tobacco settlement agreement
24 and all proceeds of that right. The description may include any additional

1 information that describes the collateral in a manner that is legally sufficient under
2 the laws of this state.

3 3. The tobacco settlement revenues are general intangibles for purposes of ch.
4 409.

5 4. A security interest perfected under this paragraph is enforceable against the
6 debtor, any assignee or grantee, and all third parties, including creditors under any
7 lien obtained by judicial proceedings, subject only to the rights of any third parties
8 holding security interests in the tobacco settlement revenues previously perfected
9 under this paragraph. Unless the applicable security agreement provides otherwise,
10 a perfected security interest in the tobacco settlement revenues is a continuously
11 perfected security interest in all tobacco settlement revenues existing on the date of
12 the agreement or arising after the date of the agreement. A security interest
13 perfected under this paragraph has priority over any other lien, including any lien
14 obtained by judicial proceedings, which subsequently attaches to the tobacco
15 settlement revenues.

16 5. The priority of a security interest created under this paragraph is not
17 affected by the commingling of proceeds arising from the tobacco settlement
18 revenues with other amounts.

19 (c) The sale, assignment, and transfer of tobacco settlement revenues are
20 governed by this paragraph. All of the following apply to a sale, assignment, or
21 transfer under this paragraph:

22 1. The sale, assignment, or transfer is an absolute transfer of, and not a pledge
23 or secured transaction relating to, the seller's right, title, and interest in, to, and
24 under the tobacco settlement revenues, if the documents governing the transaction
25 expressly state that the transaction is a sale or other absolute transfer. After such

1 a transaction, the tobacco settlement revenues are not subject to any claims of the
2 seller or the seller's creditors, other than creditors holding a prior security interest
3 in the tobacco settlement revenues perfected under sub. (4) (b).

4 2. The characterization of the sale, assignment, or transfer as an absolute
5 transfer under subd. 1 and the corresponding characterization of the purchaser's
6 property interest is not affected by any of the following factors:

7 a. Commingling of amounts arising with respect to the tobacco settlement
8 revenues with other amounts.

9 b. The retention by the seller of a partial or residual interest, including an
10 equity interest, in the tobacco settlement revenues, whether direct or indirect, or
11 whether subordinate or otherwise.

12 c. The sale of only a portion of the tobacco settlement revenues or an undivided
13 interest in the tobacco settlement revenues.

14 d. Any recourse that the purchaser or its assignees may have against the seller.

15 e. Whether the seller is responsible for collecting payments due under the
16 tobacco settlement revenues or for otherwise enforcing any of the tobacco settlement
17 revenues or retains legal title to the tobacco settlement revenues for the purpose of
18 these collection activities.

19 f. The treatment of the sale, assignment, or transfer for tax purposes.

20 3. The sale, assignment, or transfer is perfected automatically as against third
21 parties, including any judicial lien creditors, upon attachment under ch. 409.

22 4. Nothing in this subsection precludes consideration of the factors listed in
23 subd. 2. a. to e. in determining whether the sale, assignment, or transfer is a sale for
24 tax purposes. The characterization of the sale, assignment, or transfer as an

1 absolute transfer under subd. 1. may not be considered in determining whether the
2 sale, assignment, or transfer is a sale for tax purposes.

3 (5) If the secretary sells the state's right to receive any of the payments under
4 the tobacco settlement agreement, the state pledges to and agrees with any
5 purchaser or subsequent transferee of the state's right to receive any of the payments
6 under the tobacco settlement agreement that the state will not limit or alter its
7 powers to fulfill the terms of the tobacco settlement agreement, nor will the state in
8 any way impair the rights and remedies provided under the tobacco settlement
9 agreement. The state also pledges to and agrees with any purchaser or subsequent
10 transferee of the state's right to receive any of the payments under the tobacco
11 settlement agreement that the state will pay all costs and expenses in connection
12 with any action or proceeding brought by or on behalf of the purchaser or any
13 subsequent transferee related to the state's not fulfilling the terms of the tobacco
14 settlement agreement. The secretary may include this pledge and agreement of the
15 state in any contract that is entered into by the secretary under this section.

16 (6) If the secretary sells the state's right to receive any of the payments under
17 the tobacco settlement agreement, the state pledges to and agrees with any
18 purchaser or subsequent transferee of the state's right to receive any of the payments
19 under the tobacco settlement agreement that the state will not limit or alter the
20 powers of the secretary under this section until any contract that is entered into
21 under this section is fully performed, unless adequate provision is made by law for
22 the protection of the rights and remedies of the purchaser or any subsequent
23 transferee under the contract. The secretary may include this pledge and agreement
24 of the state in any contract that is entered into by the secretary under this section.

1 (7) The secretary may enter into a contract with any firm or individual engaged
2 in providing financial services for the performance of any of his or her functions
3 under this section, using selection and procurement procedures established by the
4 secretary. That contract is not subject to s. 16.705 or 16.75.

5 (8) This subsection and subs. (8m) and (9) shall govern all civil claims, suits,
6 proceedings, and actions brought against the state relating to the sale of the state's
7 right to receive any of the payments under the tobacco settlement agreement. If the
8 state fails to comply with this section or the terms of any agreement relating to the
9 sale of the state's right to receive any of the payments under the tobacco settlement
10 agreement, an action to compel compliance may be commenced against the state.

11 (8m) If the recovery of a money judgment against the state is necessary to give
12 the plaintiff in an action under sub. (8) complete relief, a claim for the money
13 damages may be joined with the claim commenced under sub. (8).

14 (9) Sections 16.007, 16.53, and 775.01 do not apply to claims against the state
15 under sub. (8). ^{OR (8m) ✓} If there is a final judgment against the state in such an action, the
16 judgment shall be paid as provided in s. 775.04 together with interest at the rate of
17 10% per year from the date such payment was judged to have been due until the date
18 of payment of the judgment.

19 **SECTION 3.** 20.505 (1) (dm) of the statutes is created to read:

20 20.505 (1) (dm) *Sale of tobacco settlement payments.* A sum sufficient to pay
21 the costs incurred by the secretary of administration in any sale of the state's right
22 to receive any of the payments under the tobacco settlement agreement under s.
23 16.63 (2) and in organizing and initially capitalizing any corporation or company
24 under s. 16.63 (3).

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

1 SECTION 4. 20.876 of the statutes is created to read:

2 20.876 Permanent endowment fund. (1) TRANSFERS FROM FUND. There is
3 appropriated from the permanent endowment fund to the general fund:

4 (a) *Permanent endowment fund transfer to general fund.* A sum sufficient equal
5 to the amount that is required to be transferred to the general fund under s. 16.519

6 (2).

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

7 SECTION 5. 25.14 (1) (a) 15. of the statutes is created to read:

8 25.14 (1) (a) 15. The permanent endowment fund.

9 SECTION 6. 25.15 (2) (intro.) of the statutes is amended to read:

10 25.15 (2) STANDARD OF RESPONSIBILITY. (intro.) The Except as provided in s.
11 25.17 (5m) (b), the standard of responsibility applied to the board when it invests
12 money or property shall be all of the following:

13 SECTION 7. 25.17 (1) (kr) of the statutes is created to read:

14 25.17 (1) (kr) Permanent endowment fund (s. 25.69);

15 SECTION 8. 25.17 (5m) of the statutes is created to read:

16 25.17 (5m) (a) Invest any of the assets of the permanent endowment fund in
17 any investment that is an authorized investment for assets in the fixed retirement
18 investment trust under sub. (4) or assets in the variable retirement investment trust
19 under sub. (5).

20 (b) 1. If directed by the secretary of administration, invest any of the assets in
21 the permanent endowment fund in any of the following:

Insert 10-6

1 a. Evidences of indebtedness, including subordinated obligations, that are
2 secured by tobacco settlement revenues, as defined in s. 16.63 (1) (c), and that are
3 issued by a corporation or company established under s. 16.63 (3) or 231.215 or by
4 the Wisconsin health and educational facilities authority.

5 b. Certificates or other evidences of ownership interest in all or any portion of
6 tobacco settlement revenues, as defined in s. 16.63 (1) (c).

7 2. If directed by the secretary of administration to make the investments under
8 subd. 1., the board shall invest the assets under that subdivision subject to any terms
9 and conditions specified by the secretary and shall not be subject to the standard of
10 responsibility under s. 25.15 (2).

11 SECTION 9. 25.17 (16) of the statutes is created to read:

beginning in 2004,

12 25.17 (16) ~~(a)~~ ^{← s. 16.519 plain} Annually, after June 1 but not later than June 15, calculate the
13 amount of moneys that are available in the permanent endowment fund for transfer
14 to the general fund under s. 16.519. For the purpose of this calculation, moneys that
15 are available in the permanent endowment fund for transfer to the general fund shall
16 equal the following:

17 1. In 2002, an amount equal to the tobacco settlement revenues, as specified
18 in s. 20.005 (1) of the summary schedule of the biennial budget act or acts, less any
19 payments under the Attorneys General Master Tobacco Settlement Agreement of
20 November 23, 1998, that are received by the state in fiscal year 2001-02.

21 2. In 2003, an amount equal to the tobacco settlement revenues, as specified
22 in s. 20.005 (1) of the summary schedule of the biennial budget act or acts, less any
23 payments under the Attorneys General Master Tobacco Settlement Agreement of
24 November 23, 1998, that are received by the state in fiscal year 2002-03.

25 3. In 2004, and each year thereafter, the sum of the following:

1c

subdivision

1 An amount that equals 8.5% of the market value of the investments in the
2 permanent endowment fund on June 1. For the purpose of making the calculation
3 under this subd. 3. a, the board shall not include any amounts specified in this subd.

~~3. b. and 3. c.~~

subds. 2. and 3.

4 ~~3. b. and 3. c.~~
5 All proceeds of, and investment earnings on, investments of the permanent
6 endowment fund made at the direction of the secretary of administration under s.
7 25.17 (5m) (b) that are received in the fiscal year.

8 All other amounts identified by the secretary of administration as payments
9 of residual interests to the state from the sale of the state's right to receive payments
10 under the Attorneys General Master Tobacco Settlement Agreement of November
11 23, 1998, that are received in the fiscal year.

12 (b) Annually, ^{beginning on 2004,} submit to the secretary of administration and to the chief clerk
13 of each house, for distribution to the appropriate standing committees under s.
14 13.172 (3), a report specifying the amount of moneys that are available in the
15 permanent endowment fund for transfer to the general fund under s. 16.519.

SECTION 10. 25.66 (1) of the statutes is amended to read:

25.66 (1) There is ~~created~~ a separate nonlapsible trust fund, known as the
tobacco control fund, to consist of, in fiscal year ~~1999-2000~~ years 2001-02 and
2002-03, the first \$23,500,000 of the moneys received under the Attorneys General
Master Tobacco Settlement Agreement of November 23, 1998, in each of the fiscal
years, except as provided in sub. (1m).

SECTION 11. 25.66 (1m) of the statutes is created to read:

25.66 (1m) ^(a) If the state has not received in fiscal years ~~2001-02 and 2002-03~~
^{\$12,065,200} at least ~~\$23,500,000~~ under the Attorneys General Master Tobacco Settlement
Agreement of November 23, 1998, because the secretary of administration, under s.

Insert 12-24

Insert 13-3

1 16.63, has sold the state's right to receive payments under the Agreement, the
2 tobacco control fund shall also consist of any moneys transferred to the tobacco
3 control fund from the general fund under ^{S.} 16.519 (3) ~~and (4)~~.

4 SECTION 12. 25.69 of the statutes is created to read:

5 25.69 Permanent endowment fund. There is established a separate
6 nonlapsible trust fund designated as the permanent endowment fund, consisting of
7 all of the proceeds from the sale of the state's right to receive payments under the
8 Attorneys General Master Tobacco Settlement Agreement of November 23, 1998,
9 and all investment earnings on the proceeds. Moneys in the permanent endowment
10 fund shall be used only to make the transfers required under s. 16.519 (2) ~~and~~ 5.20.876(1)

11 SECTION 13. 231.01 (9) of the statutes is amended to read:

12 231.01 (9) "Revenues" means, with respect to any project, the rents, fees,
13 charges, and other income or profit derived therefrom and, with respect to any bonds
14 issued under s. 231.03 (6) (g), tobacco settlement revenues identified in the bond
15 resolution.

16 SECTION 14. 231.01 (11) of the statutes is created to read:

17 231.01 (11) "Tobacco settlement agreement" has the meaning given in s. 16.63
18 (1) (b).

19 SECTION 15. 231.01 (12) of the statutes is created to read:

20 231.01 (12) "Tobacco settlement revenues" has the meaning given in s. 16.63
21 (1) (c).

22 SECTION 16. 231.03 (6) (g) of the statutes is created to read:

23 231.03 (6) (g) Finance a purchase, or make a loan, under sub. (20). Bonds
24 issued under this paragraph shall be payable from, or secured by interests in, tobacco
25 settlement revenues and such other property pledged under the bond resolution and,

1 notwithstanding s. 231.08 (3), are not required to mature in 30 years or less from the
2 date of issue.

3 **SECTION 17.** 231.03 (20) of the statutes is created to read:

4 **231.03 (20)** Purchase the state's right to receive any of the payments under the
5 tobacco settlement agreement, or make a loan to be secured by the state's right to
6 receive any of the payments under the tobacco settlement agreement, upon such
7 terms and at such prices as the authority considers reasonable and as can be agreed
8 upon between the authority and the other party to the transaction. The authority
9 may issue certificates or other evidences of ownership interest in tobacco settlement
10 revenues upon such terms and conditions as specified by the authority in the
11 resolution under which the certificates or other evidences are issued or in a related
12 trust agreement or trust indenture.

13 **SECTION 18.** 231.09 of the statutes is amended to read:

14 **231.09 Bond security.** The authority may secure any bonds issued under this
15 chapter by a trust agreement, trust indenture, indenture of mortgage, or deed of
16 trust by and between the authority and one or more corporate trustees, which may
17 be any trust company or bank ~~in this state~~ having the powers of a trust company. The
18 bond resolution providing for the issuance of bonds so secured shall pledge the
19 revenues to be received by the authority as a result of the terms of the financing
20 referred to in the resolution, and may contain such provisions for protecting and
21 enforcing the rights and remedies of the bondholders as are reasonable and proper
22 and not in violation of law, including particularly such provisions as are specifically
23 authorized by this chapter to be included in any bond resolution of the authority, and
24 may restrict the individual right of action by bondholders. In addition, any bond
25 resolution may contain such other provisions as the authority deems reasonable and

1 proper for the security of the bondholders. All expenses incurred in carrying out the
2 provisions of the bond resolution may be treated as a part of the cost of the operation
3 of a project.

4 SECTION 19. 231.16 (1) of the statutes is amended to read:

5 231.16 (1) The authority may issue bonds to refund any outstanding bond of
6 the authority or indebtedness that a participating health institution, participating
7 educational institution, or participating child care provider may have incurred for
8 the construction or acquisition of a project prior to or after April 30, 1980, including
9 the payment of any redemption premium on the outstanding bond or indebtedness
10 and any interest accrued or to accrue to the earliest or any subsequent date of
11 redemption, purchase, or maturity, or to pay all or any part of the cost of constructing
12 and acquiring additions, improvements, extensions, or enlargements of a project or
13 any portion of a project. ~~No~~ Except for bonds to refund bonds issued under s. 231.03
14 (6) (g), no bonds may be issued under this section unless the authority has first
15 entered into a new or amended agreement with a participating health institution,
16 participating educational institution, or participating child care provider to provide
17 sufficient revenues to pay the costs and other items described in s. 231.13.

18 SECTION 20. 231.16 (3) of the statutes is amended to read:

19 231.16 (3) All bonds issued under this section shall be subject to this chapter
20 in the same manner and to the same extent as other bonds issued pursuant to this
21 chapter, except that the limitations with respect to dates under s. 231.03 (6) (e) and
22 (f) and (14) do not apply to bonds issued under this section, and the requirement
23 under s. 231.08 (3) that the bonds mature in 30 years or less from their date of issue
24 does not apply to bonds issued under this section to refund bonds issued under s.
25 231.03 (6) (g).

1 SECTION 21. 231.215 of the statutes is created to read:

2 **231.215 Incorporator for purpose related to purchase of right to**
3 **payments.** The authority, or its executive director, may organize one or more
4 nonstock corporations under ch. 181 or limited liability companies under ch. 183 for
5 any purpose related to purchasing or selling the state's right to receive any of the
6 payments under the tobacco settlement agreement and may take any action
7 necessary to facilitate and complete the purchase or sale.

8 SECTION 22. 409.102 (1) (intro.) of the statutes is amended to read:

9 409.102 (1) (intro.) Except as otherwise provided in s. 409.104 on excluded
10 transactions and s. 16.63 (4) on transactions involving tobacco settlement revenues,
11 this chapter applies:

12 SECTION 23. 895.11 of the statutes is created to read:

13 **895.11 Payments under the tobacco settlement agreement.** (1) In this
14 section, "tobacco settlement agreement" means the Attorneys General Master
15 Tobacco Settlement Agreement of November 23, 1998.

16 (2) The state's participation in the tobacco settlement agreement is affirmed.

17 (3) All payments received and to be received by the state under the tobacco
18 settlement agreement are the property of the state, to be used as provided by law,
19 including a sale of the right to receive the payments under s. 16.63. No political
20 subdivision of the state, and no officer or agent of any political subdivision of the
21 state, shall have or seek to maintain any claim related to the tobacco settlement
22 agreements (insert 16-22)

(END)

23 →
Insert
16-23

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1528/3insrc
RAC:.....

Insert 10-6:

(a) *Transfer to general fund.* The amounts in the schedule to be transferred to the general fund.

(b) *Transfer to general fund based on market value of investments, earnings on investments, and payments of residual interests.* A sum sufficient equal to the amount that is required to be transferred to the general fund under s. 16.519 (2).

(c) *Transfer to general fund; 2001-02 fiscal year.* The amounts in the schedule to be transferred to the general fund no later than June 30, 2002, except that the amounts in the schedule shall be reduced by any payments under the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998, that are received by the state in fiscal year 2001-02.

(d) *Transfer to general fund; 2002-03 fiscal year.* The amounts in the schedule to be transferred to the general fund no later than June 30, 2003, except that the amounts in the schedule shall be reduced by any payments under the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998, that are received by the state in fiscal year 2002-03.

SECTION 1. 20.876 (1) (a) of the statutes, as created by 2001 Wisconsin Act ... (this act), is repealed.

SECTION 2. 20.876 (1) (c) of the statutes, as created by 2001 Wisconsin Act ... (this act), is repealed.

SECTION 3. 20.876 (1) (d) of the statutes, as created by 2001 Wisconsin Act ... (this act), is repealed.

Insert 12-24:

BILL

Insert 16-22

1 any purpose related to purchasing the state's right to receive any of the payments
2 under the tobacco settlement agreement and may take any action necessary to
3 facilitate and complete the purchase.

4 **SECTION 21.** 409.102 (1) (intro.) of the statutes is amended to read:

5 409.102 (1) (intro.) Except as otherwise provided in s. 409.104 on excluded
6 transactions and s. 16.63 (4) (b) and (c) on transactions involving tobacco settlement
7 revenues, this chapter applies:

8 **SECTION 22.** 895.11 of the statutes is created to read:

9 **895.11 Payments under the tobacco settlement agreement.** (1) In this
10 section, "tobacco settlement agreement" means the Attorneys General Master
11 Tobacco Settlement Agreement entered into on November 23, 1998, by this state and
12 the leading U.S. tobacco product manufacturers.

13 (2) The state's participation in the tobacco settlement agreement is affirmed.

14 (3) All payments received and to be received under the tobacco settlement
15 agreement are the property of the state, to be used as provided by law, including a
16 sale of the payments under s. 16.63. No political subdivision of the state, and no
17 officer or agent of any political subdivision of the state, shall have or seek to maintain
18 any of the following:

19 (a) ^{no fl} A claim against any party that was released from liability by the state under
20 the tobacco settlement agreement;

21 (b) A claim against the state or any officer or agent of the state that seeks to
22 avoid or limit the tobacco settlement agreement.

23 (END)

Insert 16-22

2001-02

SECTION 4. 25.66 (1) of the statutes is repealed and recreated to read:

25.66 (1) There is created a separate nonlapsible trust fund, known as the tobacco control fund, to consist of, in fiscal year 2002, the first \$12,065,200 of the moneys received under the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998, in that year, and, in fiscal year 2003, the first \$21,228,000 of the moneys received under the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998, in that year, except as provided in sub. (1m).

2002-03

Insert 13-3:

(b) If the state has not received in fiscal year 2002-03 at least \$21,228,000 under the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998, because the secretary of administration, under s. 16.63, has sold the state's right to receive payments under the Agreement, the tobacco control fund shall also consist of any moneys transferred to the tobacco control fund from the general fund under s. 16.519 (4).

Insert 16-23:

SECTION 9459. Effective dates; other.

(1) SALE OF TOBACCO SETTLEMENT REVENUES. The repeal of sections 20.876 (1) (a), (c), and (d) of the statutes takes effect on July 1, 2003.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1528/4

RC/PK/RM/JTK/RN:cjs:jf

NOW

AMR

DOA:.....Currier - Tobacco securitization

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

Do NOT
GEN

1 **AN ACT** ...; relating to: the sale of the state's right to receive payments under the
 2 Attorneys General Master Tobacco Settlement Agreement of November 23,
 3 1998; authorizing the Wisconsin Health and Educational Facilities Authority
 4 to purchase the state's right to receive such payments and to issue bonds for the
 5 purchase; and making an appropriation.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE FINANCE

On November 23, 1998, Wisconsin and other states agreed to a settlement of lawsuits brought against the major U.S. tobacco product manufacturers (the tobacco settlement agreement). Under the tobacco settlement agreement, the state is to receive annual payments from the U.S. tobacco product manufacturers in perpetuity. This bill authorizes the secretary of administration to sell the state's right to receive payments under the tobacco settlement agreement and provides that the proceeds from this sale are to be deposited in the permanent endowment fund, a nonlapsible trust fund created in the bill.

Under the bill, annually, the secretary of administration must transfer a certain amount of moneys in the permanent endowment fund to the general fund

according to a calculation made by the investment board. The amount available for transfer in each year, as calculated by the investment board, beginning in 2004, must equal the sum of the following:

1. An amount that equals 8.5% of the market value of the investments in the permanent endowment fund on July 1.

2. All proceeds of, and investment earnings on, investments of the permanent endowment fund made at the direction of the secretary of administration that are received in the fiscal year.

3. All other amounts identified by the secretary of administration as payments of residual interests to the state from the sale of the state's right to receive moneys under tobacco settlement agreement that are received in the fiscal year.

The bill provides that the investment board must invest the assets of the permanent endowment fund in any investment that is an authorized investment for assets in the fixed retirement investment trust and the variable retirement trust. In addition, the bill requires the investment board to invest certain of the assets in the permanent endowment fund according to the terms and conditions specified by the secretary of administration; the bill specifically provides that the investment board is not subject to its statutory standard of responsibility when it makes such an investment.

For 2002 and 2003, the amount that is required to be transferred from the permanent endowment fund to the general fund is the amount that the state would have received as payments under the tobacco settlement agreement had the state's right to receive the payments not been sold.

The bill also requires that, in fiscal years 2001-02 and 2002-03, the first \$12,065,200 and \$21,228,000, respectively, in payments from the tobacco settlement agreement are deposited in the tobacco control fund and are appropriated to the tobacco control board for distribution to specific smoking cessation and prevention programs and for grants for smoking cessation education, research, and enforcement programs. In the event that the state's right to receive payments under the tobacco settlement agreement is sold before the required amounts are received in fiscal years 2001-03, the bill requires that a necessary amount be transferred from the general fund to the tobacco control fund to make up any shortfall.

The bill also authorizes the secretary of administration to organize one or more nonstock corporations or limited liability companies for any purpose related to the sale of the state's right to receive payments under the tobacco settlement agreement and appropriates moneys for the organization and initial capitalization of any such corporation or company.

The bill establishes the legal characteristics of any sale, assignment, or transfer of payments under the tobacco settlement agreement. In addition, the bill provides that, with certain exceptions, this state's version of Article 9 of the Uniform Commercial Code governs the granting and enforcing of security interests in those payments. Article 9 generally governs similar transactions. Under the bill, if a person obtains, evidences, and provides notice of an interest in the tobacco settlement agreement payments under the procedure specified in the bill, that interest is enforceable against the debtor, any assignee or grantee, and all third

parties, including creditors under any lien obtained by judicial proceedings. In addition, the interest is superior to all other liens against the tobacco settlement agreement payments that arise after the date on which the interest attaches to those payments.

Currently, DOA is required, subject to numerous exceptions, to make purchases by solicitation of bids or competitive sealed proposals preceded by public notice. DOA must prepare written justification of contractual service procurements and must comply with rules regarding conflicts of interest between contractors and DOA employees. DOA must also attempt to ensure that a specified portion of its procurement business is awarded to minority-owned businesses. This bill exempts contracts entered into by DOA to provide financial services in relation to this state's interest in the tobacco settlement agreement payments from compliance with these requirements.

Currently, with certain exceptions, no person may commence a legal action against the state unless the person presents a claim to the claims board for a recommendation and the legislature denies the claim. This bill exempts claims presented in relation to this state's interest in the tobacco settlement agreement payments from compliance with this requirement.

Under current law, the Wisconsin Health and Educational Facilities Authority (WHEFA) may issue bonds to finance certain projects of health or educational facilities, such as the construction or remodeling of a health or educational facility or related structure, and to refinance outstanding debt of health or educational facilities. Under this bill, WHEFA is authorized to purchase the state's right to receive payments under the tobacco settlement agreement, to make a loan that is secured by the state's right to receive those payments, and to issue bonds to finance the purchase or to make the loan. Any bonds issued to finance the purchase or to make the loan must be payable from, or secured by interests in, the payments under the tobacco settlement agreement. In addition, WHEFA is authorized to organize one or more nonstock corporations or limited liability companies for any purpose related to the purchase or sale of the state's right to receive payments under the tobacco settlement agreement.

This bill affirms the state's participation in the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998. In addition, the bill states that the payments received under that agreement are the property of the state, to be used as the state decides by law. The bill provides that no political subdivision of the state, or officer or agent of a political subdivision, may maintain a claim against any party that was released from liability by the state under the agreement. The bill also provides that no political subdivision of the state, or officer or agent of a political subdivision, may maintain a claim against the state or any officer or agent of the state that seeks to avoid or limit the agreement.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 16.519 of the statutes is created to read:

2 **16.519 Fund transfers relating to tobacco settlement agreement. (1)**

3 In this section, “tobacco settlement agreement” means the Attorneys General Master
4 Tobacco Settlement Agreement of November 23, 1998.

5 **(2)** Annually, on June 15, beginning in 2004, the secretary shall transfer from
6 the permanent endowment fund to the general fund an amount equal to the amount
7 calculated by the investment board under s. 25.17 (16).

8 **(3)** If the state has not received in fiscal year 2001–02 at least \$12,065,200
9 under the tobacco settlement agreement, because the secretary, under s. 16.63, has
10 sold the state’s right to receive any of the payments under the tobacco settlement
11 agreement, the secretary shall transfer from the general fund to the tobacco control
12 fund an amount equal to \$12,065,200 less any payments received under the tobacco
13 settlement agreement and deposited in the tobacco control fund in that fiscal year.

14 **(4)** If the state has not received in fiscal year 2002 03 at least \$21,228,000
15 under the tobacco settlement agreement, because the secretary, under s. 16.63, has
16 sold the state’s right to receive any of the payments under the tobacco settlement
17 agreement, the secretary shall transfer from the general fund to the tobacco control
18 fund an amount equal to \$21,228,000 less any payments received under the tobacco
19 settlement agreement and deposited in the tobacco control fund in that fiscal year.

20 **SECTION 2.** 16.63 of the statutes is created to read:

1 **16.63 Sale of state's rights to tobacco settlement agreement payments.**

2 **(1)** In this section:

3 (a) "Purchaser" means any person who has purchased the state's right to
4 receive any of the payments under the tobacco settlement agreement.

5 (b) "Tobacco settlement agreement" means the Attorneys General Master
6 Tobacco Settlement Agreement of November 23, 1998.

7 (c) "Tobacco settlement revenues" means the right to receive settlement
8 payments arising from or pursuant to the tobacco settlement agreement and all
9 direct or indirect proceeds of that right.

10 **(2)** The secretary may sell for cash or other consideration the state's right to
11 receive any of the payments under the tobacco settlement agreement.

12 **(3)** The secretary may organize one or more nonstock corporations under ch.
13 181 or limited liability companies under ch. 183 for any purpose related to the sale
14 of the state's right to receive any of the payments under the tobacco settlement
15 agreement and may take any action necessary to facilitate and complete the sale.

16 **(4)** (a) Tobacco settlement revenues may not be deemed proceeds of any
17 property which is not tobacco settlement revenues.

18 (b) Except as otherwise provided in this subsection, the creation, perfection,
19 and enforcement of security interests in tobacco settlement revenues are governed
20 by ch. 409. Notwithstanding ch. 409, with regard to creating, perfecting, and
21 enforcing a valid security interest in tobacco settlement revenues:

22 1. If this state or the Wisconsin health and educational facilities authority is
23 the debtor in the transaction, the proper place to file the required financing
24 statement to perfect the security interest is the department of financial institutions.

1 *include a description of collateral that*
2 *describes* 2. The ~~description of collateral in the~~ required financing statement shall
3 describe the collateral as general intangibles consisting of the right to receive
4 settlement payments arising from or pursuant to the tobacco settlement agreement
5 and all proceeds of that right. The ~~description~~ *description of* may include any additional
6 ~~information that describes the collateral in a manner~~ that is legally sufficient under
7 the laws of this state.

8 3. The tobacco settlement revenues are general intangibles for purposes of ch.
9 409.

10 4. A security interest perfected under this paragraph is enforceable against the
11 debtor, any assignee or grantee, and all third parties, including creditors under any
12 lien obtained by judicial proceedings, subject only to the rights of any third parties
13 holding security interests in the tobacco settlement revenues previously perfected
14 under this paragraph. Unless the applicable security agreement provides otherwise,
15 a perfected security interest in the tobacco settlement revenues is a continuously
16 perfected security interest in all tobacco settlement revenues existing on the date of
17 the agreement or arising after the date of the agreement. A security interest
18 perfected under this paragraph has priority over any other lien, including any lien
19 obtained by judicial proceedings, which subsequently attaches to the tobacco
20 settlement revenues.

21 5. The priority of a security interest created under this paragraph is not
22 affected by the commingling of proceeds arising from the tobacco settlement
23 revenues with other amounts.

24 (c) The sale, assignment, and transfer of tobacco settlement revenues are
25 governed by this paragraph. All of the following apply to a sale, assignment, or
transfer under this paragraph:

1

2 1. The sale, assignment, or transfer is an absolute transfer of, and not a pledge^{of}
3 or secured transaction relating to, the seller's right, title, and interest in, to, and
4 under the tobacco settlement revenues, if the documents governing the transaction
5 expressly state that the transaction is a sale or other absolute transfer. After such
6 a transaction, the tobacco settlement revenues are not subject to any claims of the
7 seller or the seller's creditors, other than creditors holding a prior security interest
8 in the tobacco settlement revenues perfected under sub. (4) (b).

8

9 2. The characterization of the sale, assignment, or transfer as an absolute
10 transfer under subd. 1 and the corresponding characterization of the purchaser's
11 property interest is not affected by any of the following factors:

11

12 a. Commingling of amounts arising with respect to the tobacco settlement
13 revenues with other amounts.

13

14 b. The retention by the seller of a partial or residual interest, including an
15 equity interest, in the tobacco settlement revenues, whether direct or indirect, or
16 whether subordinate or otherwise.

16

17 c. The sale of only a portion of the tobacco settlement revenues or an undivided
18 interest in the tobacco settlement revenues.

18

19 d. Any recourse that the purchaser or its assignees may have against the seller.

19

20 e. Whether the seller is responsible for collecting payments due under the
21 tobacco settlement revenues or for otherwise enforcing any of the tobacco settlement
22 revenues or retains legal title to the tobacco settlement revenues for the purpose of
23 these collection activities.

23

24 f. The treatment of the sale, assignment, or transfer for tax purposes.

24

25 3. The sale, assignment, or transfer is perfected automatically as against third
parties, including any judicial lien creditors, upon attachment under ch. 409.

1 nonstock corporations under ch. 181 or limited liability companies under ch. 183 for
2 any purpose related to purchasing or selling the state's right to receive any of the
3 payments under the tobacco settlement agreement and may take any action
4 necessary to facilitate and complete the purchase or sale.

5 **SECTION 25.** 409.102 (1) (intro.) of the statutes is amended to read:

6 409.102 (1) (intro.) Except as otherwise provided in s. 409.104 on excluded
7 transactions and s. 16.63 (4) on transactions involving tobacco settlement revenues,
8 this chapter applies:

9 **SECTION 26.** 895.11 of the statutes is created to read:

10 **895.11 Payments under the tobacco settlement agreement.** (1) In this
11 section, "tobacco settlement agreement" means the Attorneys General Master
12 Tobacco Settlement Agreement of November 23, 1998.

13 (2) The state's participation in the tobacco settlement agreement is affirmed.

14 (3) All payments received and to be received by the state under the tobacco
15 settlement agreement are the property of the state, to be used as provided by law,
16 including a sale of the right to receive the payments under s. 16.63. No political
17 subdivision of the state, and no officer or agent of any political subdivision of the
18 state, shall have or seek to maintain any claim related to the tobacco settlement
19 agreement or any claim against any party that was released from liability by the
20 state under the tobacco settlement agreement.

21 **SECTION 9459. Effective dates; other.**

22 (1) **SALE OF TOBACCO SETTLEMENT REVENUES.** The repeal of sections 20.876 (1) (a),
23 (c), and (d) of the statutes takes effect on July 1, 2003.

24

(END)

2/1/2007

Per Rob:

- ① Page 7, line 7: change (4)(b) to (b)
- ② Page 7, line 16: "sale" to "sale,
assignment, or transfer"

Per David Reuler

- ① Analysis change 7/11 to 6/11
- ② Page 12, line 15: amounts "or investments"

Champagne, Rick

From: Hoadley, Frank
Sent: Thursday, February 01, 2001 12:47 PM
To: Champagne, Rick
Cc: Montgomery, John; Ziegler, Paul
Subject: FW: Tobacco securitization appropriations

Rick -

Please consider this a drafting instruction to change the appropriation numbers.

Thanks,

Frank

-----Original Message-----

From: Ziegler, Paul
Sent: Thursday, February 1, 2001 10:17 AM
To: Hoadley, Frank
Cc: Montgomery, John; Koskinen, John
Subject: Tobacco securitization appropriations

Frank -- Monty showed me the most recent version (/4) of the tobacco securitization draft. The draft establishes a new department number under which the SEG appropriations are created. Monty and I concluded that at this point in the process, we would prefer to avoid creating a new department number. Instead, we would prefer to have the permanent fund SEG appropriations appear under department number 855 Miscellaneous Appropriations. Under 855, the permanent fund SEG appropriations could be placed under program 4 Tax assistance and transfer payments or under program 6 miscellaneous receipts. Program 4 may be the best choice. Please convey this to the LRB.

Please email to me a copy of the most recent draft.

Thank you.

Paul