



*(D-Nate)*  
State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-1528/8  
RC/PK/RM/JTK/RN:cjs:ch

*(Today)*

*RMR*

DOA:.....Currier – Tobacco securitization

FOR 2001 03 BUDGET — NOT READY FOR INTRODUCTION

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.

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*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 June 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 may 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

21, 169, 200

\$12,006,400

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 also provides that no political subdivision of the state, or officer or agent of a political subdivision, may maintain a claim related to the tobacco settlement agreement or any claim against any party that was released from liability by the state under the tobacco settlement agreement.

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

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***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~~ <sup>\$12,006,400</sup>  
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~~ <sup>\$12,006,400</sup> 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~~ <sup>\$21,169,200</sup>  
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~~ <sup>\$21,169,200</sup> 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 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).

\$12,006,400

11 SECTION 17. 25.66 (1m) of the statutes is created to read:

12 25.66 (1m) (a) If the state has not received in fiscal year 2001-02 at least

13

~~\$12,006,400~~ under the Attorneys General Master Tobacco Settlement Agreement of  
14 November 23, 1998, because the secretary of administration, under s. 16.63, has sold  
15 the state's right to receive payments under the Agreement, the tobacco control fund  
16 shall also consist of any moneys transferred to the tobacco control fund from the  
17 general fund under s. 16.519 (3).

\$21,169,200

18

(b) If the state has not received in fiscal year 2002-03 at least ~~\$21,228,000~~

19 under the Attorneys General Master Tobacco Settlement Agreement of  
20 November 23, 1998, because the secretary of administration, under s. 16.63, has sold  
21 the state's right to receive payments under the Agreement, the tobacco control fund  
22 shall also consist of any moneys transferred to the tobacco control fund from the  
23 general fund under s. 16.519 (4).

24 SECTION 18. 25.69 of the statutes is created to read:

1 including a sale, assignment, or transfer of the right to receive the payments under  
2 s. 16.63. No political subdivision of the state, and no officer or agent of any political  
3 subdivision of the state, shall have or seek to maintain any claim related to the  
4 tobacco settlement agreement or any claim against any party that was released from  
5 liability by the state under the tobacco settlement agreement.

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

7 (1) SALE OF TOBACCO SETTLEMENT REVENUES. The amendment of section 25.69 of  
8 the statutes and the repeal of section 20.855 (4) (rc), (rp), and (rv) of the statutes take  
9 effect on July 1, 2003.

10 (END)

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

LRB-1528/7~~dn~~  
RAC:cjs:ch

8dn

February 6, 2001

Dawn Currier/Frank Hoadley:

This draft reconciles LRB-1528 and LRB-1205. Both of these drafts should continue to appear in the compiled bill. The only change in this draft is that the treatment of s. 25.66 (1) is taken out of this draft and is treated in LRB-1205

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The dollar amounts are changed in ss. 16.519 (3) and (4) and 25.66 (1M) (a) and (b). The dollar amounts are the same as those in the latest version of LRB-1205

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

LRB-1528/8dn  
RAC:cjs:rs

February 9, 2001

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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:

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The bill provides that the investment board may 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.

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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.

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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 also provides that no political subdivision of the state, or officer or agent of a political subdivision, may maintain a claim related to the tobacco settlement agreement or any claim against any party that was released from liability by the state under the tobacco settlement agreement.

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

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***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 \$12,006,400  
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 \$12,006,400 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 \$21,169,200  
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 \$21,169,200 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 required financing statement shall include a description of collateral  
22 that describes 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 required financing statement may include any

**SECTION 2**

1 additional description of collateral that is legally sufficient under the laws of this  
2 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 created by operation  
14 of law or otherwise, which subsequently attaches to the tobacco settlement revenues.

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

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

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

1 seller or the seller's creditors, other than creditors holding a prior security interest  
2 in the tobacco settlement revenues perfected under par. (b).

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

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

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

11 c. The sale, assignment, or transfer of only a portion of the tobacco settlement  
12 revenues or an undivided interest in the tobacco settlement revenues.

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

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

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

19 3. The sale, assignment, or transfer is perfected automatically as against third  
20 parties, including any third parties with liens created by operation of law or  
21 otherwise, 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

**SECTION 2**

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,  
16 the judgment shall be paid as provided in s. 775.04 together with interest at the rate  
17 of 10% per year from the date such payment was judged to have been due until the  
18 date 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.** 20.855 (4) (rc) of the statutes is created to read:

2           20.855 (4) (rc) *Transfer to general fund.* From the permanent endowment fund,  
3 the amounts in the schedule to be transferred to the general fund.

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

4           **SECTION 5.** 20.855 (4) (rc) of the statutes, as created by 2001 Wisconsin Act ...  
5 (this act), is repealed.

6           **SECTION 6.** 20.855 (4) (rh) of the statutes is created to read:

7           20.855 (4) (rh) *Annual transfer from permanent endowment fund to general*  
8 *fund.* From the permanent endowment fund, to be transferred to the general fund,  
9 a sum sufficient equal to the amount that is required to be transferred to the general  
10 fund under s. 16.519 (2).

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

11           **SECTION 7.** 20.855 (4) (rp) of the statutes is created to read:

12           20.855 (4) (rp) *Transfer to general fund; 2001-02 fiscal year.* From the  
13 permanent endowment fund, the amounts in the schedule to be transferred to the  
14 general fund no later than June 30, 2002, except that the amounts in the schedule  
15 shall be reduced by any payments under the Attorneys General Master Tobacco  
16 Settlement Agreement of November 23, 1998, that is received by the state in fiscal  
17 year 2001-02.

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

18           **SECTION 8.** 20.855 (4) (rp) of the statutes, as created by 2001 Wisconsin Act ...  
19 (this act), is repealed.

20           **SECTION 9.** 20.855 (4) (rv) of the statutes is created to read:

1           20.855 (4) (rv) *Transfer to general fund; 2002-03 fiscal year.* From the  
2 permanent endowment fund, the amounts in the schedule to be transferred to the  
3 general fund no later than June 30, 2003, except that the amounts in the schedule  
4 shall be reduced by any payments under the Attorneys General Master Tobacco  
5 Settlement Agreement of November 23, 1998, that is received by the state in fiscal  
6 year 2002-03.

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

7           **SECTION 10.** 20.855 (4) (rv) of the statutes, as created by 2001 Wisconsin Act  
8 .... (this act), is repealed.

9           **SECTION 11.** 25.14 (1) (a) 15. of the statutes is created to read:

10           25.14 (1) (a) 15. The permanent endowment fund.

11           **SECTION 12.** 25.15 (2) (intro.) of the statutes is amended to read:

12           25.15 (2) STANDARD OF RESPONSIBILITY. (intro.) The Except as provided in s.  
13 25.18 (1) (p), the standard of responsibility applied to the board when it invests  
14 money or property shall be all of the following:

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

16           25.17 (1) (kr) Permanent endowment fund (s. 25.69);

17           **SECTION 14.** 25.17 (16) of the statutes is created to read:

18           25.17 (16) (a) Annually, after June 1 but not later than June 15, beginning in  
19 2004, calculate the amount of moneys that are available in the permanent  
20 endowment fund for transfer to the general fund under s. 16.519. For the purpose  
21 of this calculation; moneys that are available in the permanent endowment fund for  
22 transfer to the general fund shall equal the sum of the following:

**SECTION 14**

1           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 subdivision, the board shall not include any amounts or investments  
4 specified in subds. 2. and 3.

5           2. 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 25.18 (1) (p) that are received in the fiscal year.

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

17           **SECTION 15.** 25.18 (1) (o) of the statutes is created to read:

18           25.18 (1) (o) Invest any of the assets of the permanent endowment fund in any  
19 investment that is an authorized investment for assets in the fixed retirement  
20 investment trust under s. 25.17 (4) or assets in the variable retirement investment  
21 trust under s. 25.17 (5).

22           **SECTION 16.** 25.18 (1) (p) of the statutes is created to read:

23           25.18 (1) (p) 1. If directed by the secretary of administration, invest any of the  
24 assets in the permanent endowment fund in any of the following:

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 17.** 25.66 (1m) of the statutes is created to read:

12          25.66 (1m) (a) If the state has not received in fiscal year 2001–02 at least  
13          \$12,006,400 under the Attorneys General Master Tobacco Settlement Agreement of  
14          November 23, 1998, because the secretary of administration, under s. 16.63, has sold  
15          the state's right to receive payments under the Agreement, the tobacco control fund  
16          shall also consist of any moneys transferred to the tobacco control fund from the  
17          general fund under s. 16.519 (3).

18          (b) If the state has not received in fiscal year 2002–03 at least \$21,169,200  
19          under the Attorneys General Master Tobacco Settlement Agreement of  
20          November 23, 1998, because the secretary of administration, under s. 16.63, has sold  
21          the state's right to receive payments under the Agreement, the tobacco control fund  
22          shall also consist of any moneys transferred to the tobacco control fund from the  
23          general fund under s. 16.519 (4).

24          **SECTION 18.** 25.69 of the statutes is created to read:

1           **25.69 Permanent endowment fund.** There is established a separate  
2 nonlapsible trust fund designated as the permanent endowment fund, consisting of  
3 all of the proceeds from the sale of the state's right to receive payments under the  
4 Attorneys General Master Tobacco Settlement Agreement of November 23, 1998,  
5 and all investment earnings on the proceeds. Moneys in the permanent endowment  
6 fund shall be used only to make the transfers under s. 20.855 (4) (rc), (rh), (rp), and  
7 (rv).

8           **SECTION 19.** 25.69 of the statutes, as created by 2001 Wisconsin Act ... (this  
9 act), is amended to read:

10           **25.69 Permanent endowment fund.** There is established a separate  
11 nonlapsible trust fund designated as the permanent endowment fund, consisting of  
12 all of the proceeds from the sale of the state's right to receive payments under the  
13 Attorneys General Master Tobacco Settlement Agreement of November 23, 1998,  
14 and all investment earnings on the proceeds. Moneys in the permanent endowment  
15 fund shall be used only to make the transfers under s. 20.855 (4) ~~(rc), (rh), (rp), and~~  
16 ~~(rv).~~

17           **SECTION 20.** 231.01 (9) of the statutes is amended to read:

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

22           **SECTION 21.** 231.01 (11) of the statutes is created to read:

23           231.01 (11) "Tobacco settlement agreement" has the meaning given in s. 16.63  
24 (1) (b).

25           **SECTION 22.** 231.01 (12) of the statutes is created to read:

1           231.01 (12) “Tobacco settlement revenues” has the meaning given in s. 16.63  
2 (1) (c).

3           **SECTION 23.** 231.03 (6) (g) of the statutes is created to read:

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

9           **SECTION 24.** 231.03 (20) of the statutes is created to read:

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

19           **SECTION 25.** 231.09 of the statutes is amended to read:

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

**SECTION 25**

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

10 **SECTION 26.** 231.16 (1) of the statutes is amended to read:

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

24 **SECTION 27.** 231.16 (3) of the statutes is amended to read:



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

8           **SECTION 28.** 231.215 of the statutes is created to read:

9           **231.215 Incorporator for purpose related to purchase or sale of right**  
10 **to payments.** The authority, or its executive director, may organize one or more  
11 nonstock corporations under ch. 181 or limited liability companies under ch. 183 for  
12 any purpose related to purchasing or selling the state's right to receive any of the  
13 payments under the tobacco settlement agreement and may take any action  
14 necessary to facilitate and complete the purchase or sale.

15           **SECTION 29.** 409.102 (1) (intro.) of the statutes is amended to read:

16           409.102 (1) (intro.) Except as otherwise provided in s. 409.104 on excluded  
17 transactions and s. 16.63 (4) on transactions involving tobacco settlement revenues,  
18 this chapter applies:

19           **SECTION 30.** 895.11 of the statutes is created to read:

20           **895.11 Payments under the tobacco settlement agreement.** (1) In this  
21 section, "tobacco settlement agreement" means the Attorneys General Master  
22 Tobacco Settlement Agreement of November 23, 1998.

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

24           (3) All payments received and to be received by the state under the tobacco  
25 settlement agreement are the property of the state, to be used as provided by law,

1 including a sale, assignment, or transfer of the right to receive the payments under  
2 s. 16.63. No political subdivision of the state, and no officer or agent of any political  
3 subdivision of the state, shall have or seek to maintain any claim related to the  
4 tobacco settlement agreement or any claim against any party that was released from  
5 liability by the state under the tobacco settlement agreement.

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

7 (1) SALE OF TOBACCO SETTLEMENT REVENUES. The amendment of section 25.69 of  
8 the statutes and the repeal of section 20.855 (4) (rc), (rp), and (rv) of the statutes take  
9 effect on July 1, 2003.

10 (END)