

**SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION**

S.F. No. 3124

(SENATE AUTHORS: CHAMBERLAIN, Draheim, Pratt, Eichorn and Goggin)
DATE 02/14/2022 D-PG 4992 OFFICIAL STATUS Introduction and first reading Referred to Finance

1.1 A bill for an act
1.2 relating to capital investment; requiring the commissioner of management and
1.3 budget to defease certain outstanding bonds; appropriating money; repealing
1.4 Minnesota Statutes 2020, sections 16A.97; 16A.98; 16A.99.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **BOND DEFEASANCE.**

1.7 The commissioner of management and budget must prepay and defease any outstanding
1.8 bonds sold and issued pursuant to Minnesota Statutes, section 16A.99, on or before
1.9 September 1, 2022. The commissioner must mail notice of redemption of the bonds as
1.10 required by law and the official bond sale statement.

1.11 **EFFECTIVE DATE.** This section is effective the day following final enactment.

1.12 Sec. 2. **APPROPRIATION; DEFEASANCE OF BONDS.**

1.13 In fiscal year 2022, an amount as described in this section is appropriated from the
1.14 general fund to the commissioner of management and budget to prepay and defease any
1.15 outstanding bonds under section 1. The amount must be sufficient to prepay the \$357,055,000
1.16 outstanding principal balance plus any interest on the bonds accrued on and after March 1,
1.17 2022, until the date of prepayment and any financing costs associated with the prepayment
1.18 and defeasance of the bonds.

1.19 **EFFECTIVE DATE.** This section is effective the day following final enactment.

1.20 Sec. 3. **REPEALER.**

1.21 Minnesota Statutes 2020, sections 16A.97; 16A.98; and 16A.99, are repealed.

- 2.1 **EFFECTIVE DATE.** This section is effective the day after the bonds are prepaid and
- 2.2 defeased under section 1.

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The commissioner may sell and issue debt under either or both of sections 16A.98 and 16A.99, but the net proceeds of bonds issued and sold under those sections together must not exceed \$640,000,000 during fiscal years 2012 and 2013.

16A.98 TOBACCO SECURITIZATION BONDS.

Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section.

(a) "Authority" means the Tobacco Securitization Authority created and established under subdivision 3.

(b) "Authorized officer" means any of the members of the authority identified and described in subdivision 3.

(c) "Bond" means any instrument evidencing the obligation to pay money authorized or issued by the authority as provided by this section, including without limitation, bonds, notes, or certificates.

(d) "Bondholder" means, in the case of a bond issued in registered form, the registered owner of the bond and otherwise, the owner of the bond.

(e) "Commissioner" means the commissioner of management and budget.

(f) "Consent judgment" means the consent judgment, as the same has been and may be corrected, amended, or modified, in the action styled as The State of Minnesota, By Hubert Humphrey, III, Its Attorney General, and Blue Cross and Blue Shield of Minnesota v. Philip Morris Incorporated, et al., No. C1-94-8565 (Minnesota District Court, Second Judicial District, May 8, 1998).

(g) "General tobacco subaccount" means the account established by the authority within the tobacco settlement recovery account established under subdivision 12 for the net proceeds of bonds.

(h) "Settlement agreement" means the settlement agreement and stipulation for entry of consent judgment, dated May 8, 1998, between the State of Minnesota, By Hubert Humphrey, III, Its Attorney General, and Blue Cross and Blue Shield of Minnesota, on the one hand, and Philip Morris Incorporated, et al., on the other hand, and the subject of the consent judgment.

(i) "Net proceeds of bonds" means the gross proceeds of the sale of bonds issued under subdivision 5, less any amounts applied or to be applied to pay transaction and administrative expenses, including underwriting discount, to pay capitalized interest and to fund any reserves deemed necessary or appropriate by the authority, but does not include any investment earnings realized thereon.

(j) "Participating manufacturer" means a tobacco product manufacturer that is or becomes a signatory to the settlement agreement.

(k) "Pledged tobacco revenues" means the state's tobacco settlement revenues sold to the authority under the sale agreement and pledged by the authority for the payment of bonds and any related bond facility.

(l) "Related bond facility" means any interest rate exchange or similar agreement or any bond insurance policy, letter of credit or other credit enhancement facility, liquidity facility, guaranteed investment or reinvestment agreement, or other similar agreement, arrangement, or contract.

(m) "Residual amount in tobacco settlement revenues" means any tobacco settlement revenues determined as moneys received but not required for the identified period in which revenues are received, to pay principal or interest on bonds or administrative or transaction expenses of the authority, or to fund reserves or other requirements relating to bonds issued or related bond facilities made under this section.

(n) "Sale agreement" means any agreement authorized as provided in this section in which the state provides for the sale of all or a portion of the tobacco settlement revenues to the authority.

(o) "State" means the state of Minnesota.

(p) "Tobacco settlement bond proceeds fund" is established within the state treasury and consists of the net proceeds from any sale, conveyance, or transfer of the state's tobacco settlement revenues from the authority.

(q) "Tobacco settlement recovery account" is the account established by the authority outside of the state's treasury.

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(r) "Tobacco settlement revenues subaccount" means the account established by the authority within the tobacco settlement recovery account established under subdivision 12 for receipt of tobacco settlement revenues and for payment of debt service of bonds authorized under this section.

(s) "Tobacco settlement residual subaccount" means the account established by the authority within the tobacco settlement recovery account established under subdivision 12 for receipt of the residual amount in the tobacco settlement revenues subaccount.

(t) "Tobacco settlement revenues" means all tobacco settlement payments received by the state on and after July 21, 2011, and required to be made under the terms of the settlement agreement by participating manufacturers, and the state's rights to receive the tobacco settlement payments on and after July 21, 2011, exclusive of any payments made with respect to liability to make those payments for calendar years completed before July 21, 2011.

Subd. 2. Ownership, transfer, and sale of state's right to tobacco settlement revenues. All tobacco settlement revenues received and to be received by the state are the property of the state, to be used as provided by law, including a sale, assignment, or transfer of the right to receive the tobacco settlement revenues under this subdivision. During fiscal years 2012 and 2013, the commissioner may sell, convey, or otherwise transfer to the authority, and may take any action necessary to facilitate and complete the sale, conveyance, or transfer to the authority, the tobacco settlement revenues in exchange for the net proceeds of bonds and a right to the residual amount in the tobacco settlement revenues subaccount. Unless otherwise directed by statute, the net proceeds of any such sale, conveyance, or transfer shall be deposited in the general tobacco subaccount. The authority's purchased interest in tobacco settlement revenues received by the state from time to time shall be deposited in the tobacco settlement revenues subaccount, and the residual amount in tobacco settlement revenues received by the state from time to time shall be deposited in the tobacco settlement residual subaccount, in each case to be applied for the purposes and in the manner described in this section.

Any sale, conveyance, or other transfer authorized by this subdivision shall be evidenced by an instrument or agreement in writing signed on behalf of the state by the commissioner. A certified copy of the instrument or agreement shall be filed with the commissioner and the chairs of the senate Finance Committee and the house of representatives Ways and Means Committee promptly upon execution and delivery thereof. The instrument or agreement shall require, as a condition of the sale, conveyance, or other transfer, that the authority notify the commissioner promptly upon the issuance, sale, and delivery thereof if any bonds are issued that are secured by any of the tobacco settlement revenues and provide the commissioner with all information on the distribution of the bond proceeds. The commissioner shall submit a report to the chairs of the senate Finance Committee and the house of representatives Ways and Means Committee that includes all of the information provided to the commissioner by the authority under this subdivision. The instrument or agreement may include an irrevocable direction to pay all or a specified portion of the tobacco settlement revenues directly to or upon the order of the authority, or to any escrow agent or any trustee under an indenture or other agreement securing any bonds issued or related bond facilities made under this section. Upon execution and delivery of the sale agreement as provided in this section, the sale, conveyance, or other transfer of the right to receive the tobacco settlement revenues, shall, for all purposes, be a true sale and absolute conveyance of all right, title, and interest therein and not as a pledge or other security interest for any borrowing, valid, binding, and enforceable in accordance with the terms thereof and such instrument or agreements and any related instrument, agreement, or other arrangement, including any pledge, grant of security interest, or other encumbrance made by authority to secure any bonds issued by the authority, and shall not be subject to disavowal, disaffirmance, cancellation, or avoidance by reason of insolvency of any party, lack of consideration, or any other fact, occurrence, or rule of law. On and after the effective date of the sale of any portion, including all of the tobacco settlement revenues, the state shall have no right, title, or interest in or to the portion of the tobacco settlement revenues sold, and the portion of the tobacco settlement revenues sold shall be the property of the authority, and shall be received, held, and disbursed by the authority in a trust fund outside the state treasury. Any portions of the tobacco settlement revenues sold to the authority and held in trust may be invested in investments and deposit accounts or certificates, and with security, agreed upon with the bondholders or a trustee for the bondholders.

The procedures and requirements set forth in this subdivision shall be the sole procedures and requirements applicable to the sale of the tobacco settlement revenues.

Subd. 3. Establishment and powers of authority. (a) The authority is hereby established as a body corporate and politic and a public instrumentality of, but having a legal existence independent and separate from the state and, accordingly, the assets, liabilities, and funds of the authority shall be neither consolidated nor commingled with those of the state treasury, provided that the assets,

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liabilities, and funds of the authority shall be held by a duly designated agent or fiduciary of the authority. If the authority does not designate a fiduciary or an agent for the purposes of this subdivision, the assets and funds of the authority shall be held in the state treasury. The authority and its corporate existence shall continue until 12 months after all its liabilities have been met or otherwise discharged. Upon the termination of the existence of the authority, all of its rights and property shall pass to and be vested in the state. The authority shall be established for the express limited public purposes set forth in this section, and no part of the net earnings of the authority shall inure to any private individual.

(b) The authority shall be governed by a three-member board consisting of the commissioner, the commissioner of revenue, and the commissioner of health. The commissioner shall serve as the chair and chief executive officer of the authority, who shall sign instruments or agreements authorized by this section on behalf of the authority; provided that the authority may by resolution authorize a member other than the commissioner to sign authorized instruments or agreements. The authority may elect other officers as necessary from its members. The authority may also appoint a nonremunerated chief financial officer who may or may not be a member of the authority in order to provide financial analysis and advice regarding any transaction of the authority. The powers of the authority shall be subject to the terms, conditions, and limitations contained within this section, and any applicable covenants or agreements of the authority in any indenture or other agreement relating to any then outstanding bonds or related bond facilities. The authority may enter into contracts regarding any matter connected with any corporate purpose within the objects and purposes of this section. The members of the authority shall receive no salary or other compensation, either direct or indirect, for serving as members of the authority, other than reimbursement for actual and necessary expenses incurred in the performance of such person's duties. Notwithstanding the foregoing, the authority shall not be authorized to make any covenant, pledge, promise, or agreement purporting to bind the state with respect to tobacco settlement revenues, except as otherwise specifically authorized by this section.

(c) A majority of the authority, excluding vacancies, constitutes a quorum to conduct its business, to exercise its powers, and for all other purposes.

(d) The authority may conduct its business as provided under section 13D.015, including teleconference calls or interactive video, that allows for an interaction between members. If a meeting is conducted under this paragraph, a specific location must be available for the public to attend the meeting and at least one member must be present at that location.

(e) The authority may not file a voluntary petition under or be or become a debtor or bankrupt under the federal bankruptcy code or any other federal or state bankruptcy, insolvency, or moratorium law or statute as may, from time to time, be in effect, and neither any public officer nor any organization, entity, or other person shall authorize the authority to be or become a debtor or bankrupt under the federal bankruptcy code or any other federal or state bankruptcy, insolvency, or moratorium law or statute, as may, from time to time be in effect.

(f) The authority may not guarantee the debts of another.

(g) The commissioner shall provide administrative services to the authority.

(h) The authority may accept appropriations, gifts, grants, bequests, and devises, and use or dispose of them for its purposes. All gifts, grants, bequests, and revenues from those sources are appropriated to the authority.

(i) Proceeds of the authority's bonds, notes, and other obligations; amounts granted or appropriated to the authority for bond debt service reserves; income from investment; money in the funds; and all revenues from fees and charges of the authority including rentals, royalties, dividends, or other proceeds are annually appropriated to the authority for the accomplishment of its corporate purposes and must be spent, administered, and accounted for in accordance with the applicable provisions of all bond and note resolutions, indentures, and other instruments, contracts, and agreements of the authority. Notwithstanding section 16A.28, these appropriations are available until expended.

Subd. 4. **Certain powers of the authority.** The authority shall have the power to:

- (1) sue and be sued;
- (2) have a seal and alter the same at pleasure;
- (3) make and alter bylaws for its organization and internal management;

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(4) make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this subdivision, including without limitation the purchase from the state of all or a portion of the right to receive tobacco settlement revenues, and request the attorney general to commence any action to protect or enforce any right conferred upon it by any law, contract, or other agreement;

(5) retain or contract for the services of underwriters, financial advisors, accountants or other consultants or agents;

(6) pay its operating expenses and its financing costs, including its reasonable costs of issuance and sale of bonds and those of the attorney general, if any;

(7) borrow money in its name, issue negotiable bonds as named by the authority, and provide for the rights of the holders thereof as otherwise provided in this section;

(8) procure insurance against any loss in connection with its activities, properties, and assets in such amount and from such insurers as it deems desirable;

(9) invest any funds or other moneys under its custody and control in investment securities or under any related bond facility;

(10) as security for the payment of the principal of and interest on any bonds issued by it under this section and any agreement made in connection therewith and for its obligations under any related bond facility, pledge all or any part of the tobacco settlement revenues;

(11) establish and create debt service reserve funds and capitalized interest accounts and deposit therein proceeds of bonds in such amount or amounts as shall be provided by the resolutions or trust indentures for the bonds; and

(12) do any and all things necessary and proper to carry out its purposes and exercise the powers expressly given and granted in this section.

Subd. 5. Bonds of the authority. (a) The authority shall have power and is hereby authorized to issue bonds from time to time in one or more series, in an aggregate principal amount no greater than \$900,000,000, excluding refunding bonds sold and issued under this section, to provide funds not to exceed \$640,000,000 and subject to the limitation in section 16A.97, for the purchase of all or a portion of the tobacco settlement revenues pursuant to subdivision 2, and also to provide sufficient funds for the establishment of a debt service reserve fund, and the payment or provision for capitalized interest and financing costs, including, without limitation, the cost of any related credit facility.

The issuance of bonds shall be authorized by a resolution of the authority, adopted by a majority of the members of the authority without further authorization or approval. The issue of the bonds of the authority shall be special limited revenue obligations payable from and secured by a pledge of the pledged tobacco revenues, those proceeds of bonds deposited in a debt service reserve fund for the benefit of bondholders, and earnings on funds of the authority, upon terms and conditions as specified by the authority in the resolution under which the bonds are issued or in a related trust indenture.

The authority shall have the power and is hereby authorized from time to time to issue bonds, whenever it deems refunding expedient, to refund any outstanding bonds by the issuance of new bonds, provided that the refunding bonds mature not more than 30 years after the date of issuance as may be determined by the authority. The refunding bonds may be exchanged for the bonds to be refunded or sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded.

(b) The bonds of each issue shall be dated, shall bear interest, which may be includable in or excludable from the gross income of the owners for federal income tax purposes, at fixed or variable rates, payable at or prior to maturity, and shall mature at such time or times, not more than 30 years after the date of issuance, as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority. The principal and interest of the bonds may be made payable in any lawful medium. The resolution of the authority approving the issuance of the bonds shall determine the form of the bonds and the manner of execution of the bonds and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or outside the state. If any officer whose signature or a facsimile thereof appears on any bonds shall cease to be an officer before the

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delivery of the bonds, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until such delivery.

(c) The authority may sell such bonds at either public or private sale upon terms as the commissioner shall determine are not inconsistent with this section and the bonds may be sold at any price or percentage of par value. Any bid received may be rejected by the authority. The proceeds of the bonds shall be disbursed for the purposes for which the bonds were issued under the restrictions as the sale agreement and the resolution authorizing the issuance of the bonds or the related trust indenture may provide. The bonds shall be issued upon approval of the authority and without any other approvals, filings, proceedings, or the happening of any other conditions or things other than the approvals, findings, proceedings, conditions, and things that are specified and required by this section.

(d) Any pledge made by the authority shall be valid and binding at the time the pledge is made. The assets, property, revenues, reserves, or earnings so pledged shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. Notwithstanding any other provision of law to the contrary, neither the resolution nor any indenture or other instrument by which a pledge is created or by which the authority's interest in pledged assets, property, revenues, reserves, or earnings is assigned need be filed, perfected, or recorded in any public records in order to protect the pledge or perfect the lien as against third parties, except that a copy shall be filed in the records of the authority.

(e) Whether or not the bonds of the authority are of such form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the bonds are hereby made negotiable instruments for all purposes, subject only to the provisions of the bonds for registration.

(f) At the sole discretion of the authority, any bonds issued by the authority and any related bond facility made under the provisions of this section shall be secured by a resolution or trust indenture by and between the authority and the indenture trustee, which may be any trust company or bank having the powers of a trust company, whether located within or outside the state. The trust indenture or resolution providing for the issuance of the bonds shall, without limitation: (1) provide for the creation and maintenance of reserves as the authority shall determine to be proper; (2) include covenants setting forth the duties of the authority in relation to the bonds, the income of the authority, the related sale agreement, and the related tobacco settlement revenues; (3) contain provisions relating to the transfer of the residual interest upon receipt of the tobacco settlement revenues; (4) contain provisions respecting the custody, safeguarding, and application of all moneys and securities; (5) contain provisions for protecting and enforcing against the authority or the state the rights and remedies pursuant thereto and to the sale agreement of the owners of the bonds and any provider of a related bond facility as may be reasonable and proper and not in violation of law; and (6) contain other provisions as the authority may deem reasonable and proper for priorities and subordination among the owners of the bonds and providers of related bond facilities. Any reference in this section to a resolution of the authority shall include any trust indenture authorized thereby.

(g) The net proceeds of any sale, conveyance, or transfer by the state of tobacco settlement revenues shall be deposited into the authority's general tobacco subaccount. The authority shall transfer all moneys in the general tobacco subaccount to the commissioner for deposit in the tobacco settlement bond proceeds fund. Any residual amount in tobacco settlement revenues shall be deposited in the tobacco settlement residual subaccount. The balance in the tobacco residual subaccount shall be transferred to the commissioner for deposit in the general fund, as provided in subdivision 12, paragraph (b).

(h) The authority may enter into, amend, or terminate, as it determines to be necessary or appropriate, any related bond facility (1) to facilitate the issuance, sale, resale, purchase, repurchase, or payment of bonds, interest rate savings or market diversification, or the making or performance of swap contracts, including without limitation bond insurance, letters of credit and liquidity facilities, or (2) to attempt to manage or hedge risk or achieve a desirable effective interest rate or cash flow. Such facility shall be made upon the terms and conditions established by the authority, including without limitation provisions as to security, default, termination, payment, remedy, jurisdiction, and consent to service of process.

(i) The authority may enter into, amend, or terminate, as it deems to be necessary or appropriate, any related bond facility to place the obligations or investments of the authority, as represented by the bonds or the investment of reserves securing the bonds or related bond facilities or other tobacco settlement revenues or its other assets, in whole or in part, on the interest rate, cash flow, or other

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basis approved by the authority, which facility may include without limitation contracts commonly known as interest rate swap agreements, forward purchase contracts, or guaranteed investment contracts and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the authority in connection with, or incidental to, entering into, or maintaining any (1) agreement that secures bonds of the authority or (2) investment or contract providing for investment of reserves or similar facility guaranteeing an investment rate for a period of years not to exceed the underlying term of the bonds. The determination by the authority that a related bond facility or the amendment or termination thereof is necessary or appropriate as aforesaid shall be conclusive. Any related bond facility may contain such provisions as to security, default, termination, payment, remedy, jurisdiction, and consent to service of process, and other terms and conditions as determined by the authority, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate.

(j) Bonds or any related bond facility may contain a recital that they are issued or executed, respectively, pursuant to this section, which recital shall be conclusive evidence of their validity, respectively, and the regularity of the proceedings relating thereto.

(k) No member or officer of the authority or any person executing the bonds is liable personally on the bonds or is subject to any personal liability or accountability by reason of their issuance, or is liable for any other debt or obligation of the authority.

(l) Information in any register of ownership of bonds or certificates is nonpublic data under section 13.02, subdivision 9, or private data on individuals under section 13.02, subdivision 12. The information is open only to the subject of it, except as disclosure:

(1) is necessary for the registrar, the commissioner, or the legislative auditor to perform a duty;

(2) is requested by an authorized representative of the commissioner of revenue, the attorney general, or the United States commissioner of internal revenue to determine the application of a tax; or

(3) is required under section 13.03, subdivision 4.

(m) The bonds of the authority are not subject to chapter 16C.

(n) The commissioner and any other member of the authority charged with the responsibility of issuing bonds for or on behalf of the authority, may enter into written agreements or contracts relating to the continuing disclosure of information necessary to comply with, or facilitate the issuance of bonds in accordance with, federal securities laws, rules, and regulations, including Securities and Exchange Commission rules and regulations, in Code of Federal Regulations, title 17, section 240.15c 2-12. An agreement may be in the form of covenants with purchasers and holders of bonds set forth in the order or resolution authorizing the issuance of the bonds, or a separate document authorized by the order or resolution.

Subd. 6. State not liable on bonds or related bond facilities. The state is not liable on bonds of the authority, and no bond or related bond facility shall constitute an indebtedness or an obligation of the state or any subdivision thereof, within the meaning of any constitutional or statutory limitation or provision or a charge against the general credit or taxing powers, if any, of any of them but shall be payable solely from pledged tobacco revenues. No owner of any bond or provider of any related bond facility shall have the right to compel the exercise of the taxing power of the state to pay any principal installment of, redemption premium, if any, or interest on the bonds or to make any payment due under any related bond facility. The bonds must contain on their face a statement to the effect of this subdivision.

Subd. 7. Agreement with the state. (a) The state pledges and agrees with the authority, and the owners of the bonds of the authority in which the authority has included such pledge and agreement, that the state shall: (1) irrevocably direct the transfer of all pledged tobacco revenues received by the state under and in accordance with the settlement agreement directly to the authority or its assignee; (2) diligently enforce its right to collect all moneys due from the participating manufacturers under the settlement agreement, in each case in the manner and to the extent deemed necessary in the judgment of and consistent with the discretion of the attorney general of the state, provided, however, that the sale agreement shall provide (i) that the remedies available to the authority and the bondholders for any breach of the pledges and agreements of the state set forth in this clause shall be limited to injunctive relief, and (ii) that the state shall be deemed to have diligently enforced this subdivision so long as there has been no judicial determination by a court of competent jurisdiction in this state, in an action commenced by a participating tobacco

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manufacturer, that the state has failed to diligently enforce this subdivision; (3) in any materially adverse way, neither amend the settlement agreement or take any other action that would (i) impair the authority's right to receive pledged tobacco revenues, or (ii) limit or alter the rights hereby vested in the authority to fulfill the terms of its agreements with the bondholders, or (iii) impair the rights and remedies of the bondholders or the security for such bonds until such bonds, together with the interest thereon and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully paid and discharged, provided, that nothing herein shall be construed to preclude the state's regulation of smoking, smoking cessation activities and laws, and taxation and regulation of the sale of cigarettes or the like or to restrict the right of the state to amend, modify, repeal, or otherwise alter statutes imposing or relating to the taxes; and (4) not amend, supersede, or repeal the settlement agreement or this section in any way that would materially adversely affect the amount of any payment to, or the rights to such payments of, the authority or the bondholders. This pledge and agreement may be included in the sale agreement and the authority may include this pledge and agreement in any contract with the bondholders of the authority.

(b) The provisions of this section, the bonds issued pursuant to this section, and the pledges and agreements by the state and the authority to the bondholders shall not be interpreted or construed to limit or impair the authority or discretion of the attorney general to administer and enforce provisions of the settlement agreement or to direct, control, and settle any litigation or arbitration proceeding arising from or relating to the settlement agreement.

Subd. 8. Enforcement of contract. The provisions of this section and of any resolution or proceeding authorizing the issuance of bonds or a related bond facility shall constitute a contract with the holders of the bonds or the related bond facility, and the provisions thereof shall be enforceable either by mandamus or other proceeding in any Minnesota court of competent jurisdiction in Ramsey County to enforce and compel the performance of all duties required by this section and by any resolution authorizing the issuance of bonds a related bond facility adopted in response hereto.

Subd. 9. Bonds as legal investments. Any of the following entities may legally invest any sinking funds, money, or other funds belonging to them or under their control in any bonds issued under this section: (1) the state, the investment board, public officers, municipal corporations, political subdivisions, and public bodies; (2) banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business; and (3) personal representatives, guardians, trustees, and other fiduciaries.

Subd. 10. Exemption from taxation. It is hereby determined that the creation of the authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of the state and are public purposes. Accordingly, the property of the authority, its income, and its operations shall be exempt from taxation. The authority shall not be required to pay any fees, taxes, or assessments of any kind, whether state or local, including, but not limited to, fees, taxes, ad valorem taxes on real property, sales taxes or other taxes, upon or with respect to any property owned by it or under its jurisdiction, control, or supervision, or upon the uses thereof, or upon or with respect to its activities or operations in furtherance of the powers conferred upon it by this section.

Subd. 11. Report; audit. The authority shall report to the legislature and the governor by the January 15 following the end of each fiscal year. The report must include a complete operating and financial statement covering the authority's operations during the fiscal year, including amounts of income from all sources. Books and records of the authority are subject to audit by the legislative auditor in the manner prescribed for state agencies.

Subd. 12. Tobacco settlement recovery account. (a) The authority shall establish the tobacco settlement recovery account, which shall consist of three subaccounts: (1) the general tobacco subaccount, (2) the tobacco settlement revenues subaccount, and (3) the tobacco settlement residual subaccount. The authority shall deposit all moneys paid pursuant to the settlement agreement, and any other moneys as provided by law into the several subaccounts of the tobacco settlement recovery account. Money shall be deposited into the tobacco settlement revenues subaccount and the tobacco settlement residual subaccount as provided by the terms of this section, including any agreement between the state and the authority implementing the same. All other moneys available to be deposited into the tobacco settlement recovery account shall be deposited into the general tobacco subaccount. An investment made from moneys credited to a specific subaccount constitutes part of that subaccount and such subaccount shall be credited with all income from the investment of such moneys. The commissioner may invest the moneys in the several subaccounts of the tobacco settlement recovery account in the same manner, in the same types of investments, and subject to the same limitations provided in section 11A.24. Notwithstanding the foregoing, to the extent

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necessary to preserve the tax-exempt status of any bonds issued pursuant to this section, the interest on which is intended to be excludable from the gross income of the owners for federal income tax purposes, moneys on deposit in the tobacco settlement revenues subaccount and the tobacco settlement residual subaccount, may be invested in obligations the interest upon which is tax exempt under the provisions of Section 103 of the Internal Revenue Code of 1986, as now or hereafter amended, or any successor code or provision.

(b) Moneys on deposit in the tobacco settlement residual subaccount shall be transferred to the commissioner for deposit in the general fund.

(c) The amounts deposited into the tobacco settlement bond proceeds fund from the general tobacco subaccount and interest thereon are appropriated to the commissioner for payment of working capital, debt service on outstanding obligations of the general fund, the funding of debt service reserves for the bonds, each as permitted by state and federal law, nonsalary expenses incurred in conjunction with the sale of the bonds and to supplement the tobacco settlement residual subaccount to pay for appropriated obligations of the tobacco settlement recovery account for state fiscal years 2012 and 2013. The commissioner may transfer the amounts available to reduce debt service on outstanding obligations of the general fund to the state bond fund under section 16A.641.

Subd. 13. Supplemental nature of section; construction and purpose. The powers conferred by this section shall be in addition to and supplemental to the powers conferred by any other law, general or special, and may be exercised notwithstanding the provisions of any other such law. Insofar as the provisions of this section are inconsistent with the provisions of any other law, general or special, the provisions of this section shall be controlling.

Subd. 14. Severability. If any provision of this section is held invalid, such provision shall be deemed to be excised and the invalidity thereof shall not affect any of the other provisions of this section. If the application of any provision of this section to any person or circumstance is held invalid, it shall not affect the application of such provision to such persons or circumstances other than those as to which it is held invalid.

16A.99 TOBACCO APPROPRIATION BONDS.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Appropriation bond" means a bond, note, or other similar instrument of the state payable during a biennium in whole or in part from tobacco settlement revenues and from one or more of the following sources:

(1) money appropriated by law in any biennium for debt service due with respect to obligations described in subdivision 2, paragraph (b);

(2) proceeds of the sale of obligations described in subdivision 2, paragraph (b);

(3) payments received for that purpose under agreements and ancillary arrangements described in subdivision 2, paragraph (d); and

(4) investment earnings on amounts in clauses (1) to (3).

(c) "Consent judgment" means the consent judgment, as the same has been and may be corrected, amended or modified, in the action styled as The State of Minnesota, By Hubert Humphrey, III, Its Attorney General, and Blue Cross and Blue Shield of Minnesota v. Philip Morris Incorporated, et al., No. C1-94-8565 (Minnesota District Court, Second Judicial District, May 8, 1998).

(d) "Debt service" means the amount payable in any biennium of principal, premium, if any, and interest on appropriation bonds.

(e) "Settlement agreement" means the settlement agreement and Stipulation for Entry of Consent Judgment, dated May 8, 1998, between the State of Minnesota, By Hubert Humphrey, III, Its Attorney General, and Blue Cross and Blue Shield of Minnesota, on the one hand, and Philip Morris Incorporated, et al., on the other hand, and the subject of the consent judgment.

(f) "Tobacco settlement revenues" means all tobacco settlement payments received by the state on and after July 21, 2011, and required to be made, pursuant to the terms of the settlement agreement, by participating manufacturers and the state's rights to receive the tobacco settlement payments on and after July 21, 2011, exclusive of any payments made with respect to liability to make those payments for calendar years completed before July 21, 2011.

Subd. 2. Authority. (a) Subject to the limitations of this subdivision, the commissioner may sell and issue appropriation bonds of the state under this section for public purposes as provided

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by law. Proceeds of the bonds must be credited to a special appropriation bond proceeds fund in the state treasury. Net income from investment of the proceeds, as estimated by the commissioner, must be credited to the special appropriation bond proceeds fund.

(b) Appropriation bonds may be sold and issued in amounts that, in the opinion of the commissioner, are necessary to provide sufficient funds, not to exceed \$640,000,000 and subject to the limitation in section 16A.97, for achieving the purposes authorized as provided under paragraph (a), and pay debt service, pay costs of issuance, make deposits to reserve funds, pay the costs of credit enhancement, or make payments under other agreements entered into under paragraph (d); provided, however, that bonds issued and unpaid shall not exceed \$800,000,000 in principal amount, excluding refunding bonds sold and issued under subdivision 4.

(c) Appropriation bonds may be issued from time to time in one or more series on the terms and conditions the commissioner determines to be in the best interests of the state, but the term on any series of bonds may not exceed 30 years. The bonds of each issue shall be dated and bear interest, and may be includable in or excludable from the gross income of the owners for federal income tax purposes.

(d) At the time of, or in anticipation of, issuing the appropriation bonds, and at any time thereafter, so long as the appropriation bonds are outstanding, the commissioner may enter into agreements and ancillary arrangements relating to the appropriation bonds, including but not limited to trust indentures, liquidity facilities, remarketing or dealer agreements, letter of credit agreements, insurance policies, guaranty agreements, reimbursement agreements, indexing agreements, or interest exchange agreements. Any payments made or received according to the agreement or ancillary arrangement shall be made from or deposited as provided in the agreement or ancillary arrangement. The determination of the commissioner included in an interest exchange agreement that the agreement relates to an appropriation bond shall be conclusive.

(e) The commissioner may enter into written agreements or contracts relating to the continuing disclosure of information necessary to comply with, or facilitate the issuance of appropriation bonds in accordance with federal securities laws, rules, and regulations, including Securities and Exchange Commission rules and regulations in Code of Federal Regulations, title 17, section 240.15c 2-12. An agreement may be in the form of covenants with purchasers and holders of appropriation bonds set forth in the order or resolution authorizing the issuance of the appropriation bonds, or a separate document authorized by the order or resolution.

(f) The appropriation bonds are not subject to chapter 16C.

Subd. 3. **Form; procedure.** (a) Appropriation bonds may be issued in the form of bonds, notes, or other similar instruments, and in the manner provided in section 16A.672. In the event that any provision of section 16A.672 conflicts with this section, this section shall control.

(b) Every appropriation bond shall include a conspicuous statement of the limitation established in subdivision 6.

(c) Appropriation bonds may be sold at either public or private sale upon such terms as the commissioner shall determine are not inconsistent with this section and may be sold at any price or percentage of par value. Any bid received may be rejected.

(d) Appropriation bonds may bear interest at a fixed or variable rate.

(e) Notwithstanding any other law, appropriation bonds issued pursuant to this section shall be fully negotiable.

Subd. 4. **Refunding bonds.** The commissioner from time to time may issue appropriation bonds for the purpose of refunding any appropriation bonds or tobacco securitization bonds authorized under section 16A.98 then outstanding, including the payment of any redemption premiums on the bonds, any interest accrued or to accrue to the redemption date, and costs related to the issuance and sale of the refunding bonds. The proceeds of any refunding bonds may, in the discretion of the commissioner, be applied to the purchase or payment at maturity of the appropriation bonds to be refunded, to the redemption of the outstanding bonds on any redemption date, or to pay interest on the refunding bonds and may, pending application, be placed in escrow to be applied to the purchase, payment, retirement, or redemption. Any escrowed proceeds, pending such use, may be invested and reinvested in obligations that are authorized investments under section 11A.24. The income earned or realized on the investment may also be applied to the payment of the bonds to be refunded or interest or premiums on the refunded bonds, or to pay interest on the refunding bonds. After the terms of the escrow have been fully satisfied, any balance of the proceeds and any investment income may be returned to the general fund or, if applicable, the appropriation bond proceeds

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account for use in any lawful manner. All refunding bonds issued under this subdivision must be prepared, executed, delivered, and secured by appropriations in the same manner as the bonds to be refunded.

Subd. 5. **Appropriation bonds as legal investments.** Any of the following entities may legally invest any sinking funds, money, or other funds belonging to them or under their control in any appropriation bonds issued under this section:

(1) the state, the investment board, public officers, municipal corporations, political subdivisions, and public bodies;

(2) banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business; and

(3) personal representatives, guardians, trustees, and other fiduciaries.

Subd. 6. **No full faith and credit; state not required to make appropriations.** The appropriation bonds are not public debt of the state, and the full faith, credit, and taxing powers of the state are not pledged to the payment of the appropriation bonds or to any payment that the state agrees to make under this section. Appropriation bonds shall not be obligations paid directly, in whole or in part, from a tax of statewide application on any class of property, income, transaction, or privilege. Appropriation bonds shall be payable in each fiscal year only from amounts that the legislature may appropriate for debt service for any fiscal year, provided that nothing in this section shall be construed to require the state to appropriate funds sufficient to make debt service payments with respect to the bonds in any fiscal year. Appropriation bonds shall be canceled and shall no longer be outstanding on the earlier of (1) the first day of a fiscal year for which the legislature shall not have appropriated amounts sufficient for debt service, or (2) the date of final payment of the principal of and interest on the appropriation bonds.

Subd. 7. **Appropriation of proceeds.** The proceeds of appropriation bonds and interest credited to the special appropriation bond proceeds fund are appropriated to the commissioner for payment of working capital, capital expenses, debt service on outstanding indebtedness of the state and the funding of debt service reserves for the appropriation bonds, each as permitted by state and federal law, and nonsalary expenses incurred in conjunction with the sale of the appropriation bonds.

Subd. 8. **Appropriation for debt service.** The amount needed to pay principal and interest on appropriation bonds issued under this section is appropriated each year to the commissioner from the general fund subject to the repeal, unallotment under section 16A.152, or cancellation otherwise pursuant to subdivision 6.

Subd. 9. **Validation.** (a) Appropriation bonds issued pursuant to this section may be validated in the manner provided by this subdivision. Nothing in this subdivision shall be construed to prevent sale or delivery of any appropriation bonds or notes after entry of a judgment of validation by the Minnesota Supreme Court.

(b) Any appropriation bonds issued pursuant to this section that are validated shall be validated in the manner provided by this subdivision.

(c) The Minnesota Supreme Court shall have original jurisdiction to determine the validation of appropriation bonds and all matters connected therewith.

(d) The commissioner may determine the commissioner's authority to issue appropriation bonds and the legality of all proceedings in connection therewith. For this purpose a complaint shall be filed by the commissioner in the Minnesota Supreme Court against the state and the taxpayers and citizens thereof.

(e) As a condition precedent to filing of a complaint for the validation of appropriation bonds, the commissioner shall take action providing for the issuance of such appropriation bonds in accordance with law.

(f) The complaint shall set out the state's authority to issue appropriation bonds, the action or proceeding authorizing the issue and its adoption, all other essential proceedings had or taken in connection therewith, the amount of the bonds to be issued and the maximum interest they are to bear, and all other pertinent matters.

(g) The Minnesota Supreme Court shall issue an order directed against the state and taxpayers, citizens and others having or claiming any right, title, or interest affected by the issuance of appropriation bonds, or to be affected thereby, allowing all persons, in general terms and without

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naming them, and the state through its attorney general to appear before the Minnesota Supreme Court at a designated time and place and show why the complaint should not be granted and the proceedings and bonds validated. A copy of the complaint and order shall be served on the attorney general at least 20 days before the time fixed for hearing. The attorney general shall examine the complaint, and, if it appears or there is reason to believe that it is defective, insufficient, or untrue, or if in the opinion of the attorney general the issuance of the bonds in question has not been duly authorized, defense shall be made by the attorney general as the attorney general deems appropriate.

(h) Before the date set for hearing, as directed by the Minnesota Supreme Court, either the clerk of the Minnesota Appellate Courts or the commissioner shall publish a copy of the order in a legal newspaper of general circulation in Ramsey County and the state, at least once each week for two consecutive weeks, commencing with the first publication, which shall not be less than 20 days before the date set for hearing. By this publication, all taxpayers, citizens, and others having or claiming any right, title, or interest in the state, are made parties defendant to the action and the Minnesota Supreme Court has jurisdiction of them to the same extent as if named as defendants in the complaint and personally served with process.

(i) Any taxpayer, citizen, or person interested may become a party to the action by moving against or pleading to the complaint at or before the time set for hearing. The Minnesota Supreme Court shall determine all questions of law and fact and make such orders as will enable it to properly try and determine the action and render a final judgment within 30 days of the hearing with the least possible delay.

(j) If the judgment validates such appropriation bonds, such judgment is forever conclusive as to all matters adjudicated and as against all parties affected and all others having or claiming any right, title, or interest affected by the issuance of said bonds, or to be affected in any way thereby, and the validity of said bonds or of any revenues pledged for the payment thereof, or of the proceedings authorizing the issuance thereof, including any remedies provided for their collection, shall never be called in question in any court by any person or party.

(k)(1) Bonds, when validated under this section, shall have stamped or written thereon, by the proper officers of the state issuing them, a statement in substantially the following form: "This bond is one of a series of bonds which were validated by judgment of the Supreme Court of the State of Minnesota, rendered on, (year)"

(2) A certified copy of the judgment or decree shall be received as evidence in any court in this state.

(l) The costs shall be paid by the state, except when a taxpayer, citizen, or other person contests the action or intervenes, the court may tax the whole or any part of the costs against the person that is equitable.

(m) A justice of the Minnesota Supreme Court is not disqualified in any validation action because the justice is a landowner or taxpayer of the state.