IN THE SUPREME COURT OF OHIO

ORIGINAL

BOARD OF TRUSTEES OF THE TOBACCO USE PREVENTION AND CONTROL FOUNDATION, et al.,	:	Supreme Court Case No. 10-0118
	:	On Appeal from the Franklin County Court of Appeals, Tenth Appellate District
Plaintiffs-Appellants,	:	
v.	:	Court of Appeals Case Nos. 09AP-768,09AP-785, ~~09AP-832~~
KEVIN L. BOYCE, TREASURER OF STATE, et al.,	:	
Defendants-Appellees.	:	

FILED
MAY 04 2010
CLERK OF COURT
SUPREME COURT OF OHIO

ROBERT G. MILLER, JR., et al.,	:	
Plaintiffs-Appellants,	:	On Appeal from the Franklin County Court of Appeals, Tenth Appellate District
v.	:	
STATE OF OHIO, et al.,	:	Court of Appeals Case Nos. 09AP-769, 09AP-786, 09AP-833
Defendants-Appellees.	:	

AMICUS BRIEF OF FORMER OHIO ATTORNEY GENERAL BETTY D. MONTGOMERY, FORMER OHIO SENATE PRESIDENT RICHARD H. FINAN, AND FORMER DIRECTOR OF THE OHIO DEPARTMENT OF HEALTH J. NICK BAIRD, M.D., IN SUPPORT OF PLAINTIFFS-APPELLANTS

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INTRODUCTION

Amici Curiae former Ohio Attorney General Betty D. Montgomery, former Ohio Senate President Richard H. Finan, and former Director of the Ohio Department of Health J. Nick Baird, M.D. submit this brief to implore this Court to reinstate the permanent injunction issued by the Franklin County Common Pleas Court protecting the moneys in the Tobacco Use Prevention and Control Endowment Fund for their intended purpose. The endowment fund was carefully established in 2000 as a sequestered trust fund outside the state treasury, so as to assure that the assets dedicated to tobacco cessation and prevention could not be diverted to other uses by future legislative action.

Amici have a unique historical involvement in the issues in this case, because they were members of the bipartisan Ohio Tobacco Task Force created in 1999 to determine the appropriate use of the more than $10 billion that Ohio was to receive as part of the Tobacco Master Settlement Agreement ("MSA"). Then Attorney General Betty Montgomery successfully represented Ohio in the litigation generating the MSA moneys, part of which funded the tobacco use prevention and control endowment fund, and personally served as representative of her office on the Task Force. Then Senate President Richard Finan personally served as a representative of the Ohio Senate on the Task Force and led the successful legislative efforts to adopt its recommendations. And then Director of Ohio's Department of Health, J. Nick Baird, M.D., served as a representative of Governor Taft on the Task Force and was charged with implementing the transfer of the moneys at issue "outside the state treasury." Having lived the events culminating in the legislation at issue in this appeal, *amici* offer their understanding of the context surrounding that legislation.

The Task Force was formed to recommend allocation of the MSA proceeds between and among numerous worthy uses, each having support and merit in its own right. Early in its deliberations, the Task Force determined that, inasmuch as the MSA payments settled litigation commenced to recoup Ohio's hundreds of millions of dollars of medical expenditures resulting from the deleterious effects of tobacco use, good public policy required that a portion of the MSA settlement should be permanently set aside and dedicated to funding tobacco use cessation and prevention programs in Ohio.

Knowing that the General Assembly will always be subject to competing budgetary pressures, the Task Force concluded that a sequestered trust fund, established outside the state treasury, was necessary to assure that the assets dedicated to tobacco cessation and prevention could not be diverted to other uses by future legislative action. The Task Force was open and direct about the importance of its proposed trust fund approach that would be outside the power of the General Assembly to divert to other uses. Multiple analyses of the Legislative Service Commission ("LSC") informed the members of the 123rd General Assembly that the "appropriated money . . . is to be placed into the Tobacco Use Prevention and Control Endowment Fund, which the act creates as a 'custodial fund of the Treasurer of State' to carry out the duties of the Foundation." To assure a clear understanding of the consequences of the proposed structure, the LSC analysis added its own assessment of the General Assembly's power to divert moneys in this custodial account to other uses in the future: "(Money in a custodial fund of the Treasurer of State is not subject to appropriation by the General Assembly.)"

This structure reflected exactly what the Task Force sought – immunizing the tobacco use prevention and cessation moneys from future legislative action diverting them to other, then current demands. And, having been directly told by LSC (and the Office of Budget and Management) that moneys appropriated for disbursement to the proposed "custodial fund" outside the state treasury would not be subject to the control of future General Assemblies, the 123rd General Assembly enacted S.B. 192. In doing so, it expressly appropriated $234,861,033 of the initially received MSA settlement proceeds to the Ohio Department of Health and then mandated that Dr. Baird, as the

Director of the Ohio Department of Health, "disburse" that same $234,861,033 "to the Tobacco Use Prevention and Control Endowment Fund." S.B. 192 (Section 6). Dr. Baird did as the 123rd General Assembly directed, transferring the money to the trust's custodial account that is "not . . . a part of the state treasury." R.C. 183.08.

Once the money was disbursed to the endowment fund, it was spent. The General Assembly no longer had possession of it or control of its expenditure. Rather, as the Task Force proposed, upon the disbursement by the Director of these moneys, the trustees of the endowment became the legal owner of the funds, subject to the vested equitable rights of the beneficiaries identified in R.C. 183.07.

Simply put, the Task Force recommended a trust structure that would place the moneys in the Tobacco Use Prevention and Control Endowment Fund outside the state treasury and outside the reach of future General Assemblies' power to divert them from their intended purpose. In 2000, the 123rd General Assembly adopted this recommendation and expressly directed "disburse[ment]" of the moneys to the Endowment. The enactment of S.B. 192 was the culmination of the Task Force's clearly intended and clearly articulated efforts to assure permanent funding for Ohio's critical tobacco cessation and prevention programs.

Yet, contrary to S.B. 192's carefully designed structure to protect the moneys in the endowment fund in perpetuity, the decision of the Franklin County Court of Appeals would impermissibly allow the General Assembly to reach outside the state treasury, divest the endowment's trust estate, and divert its corpus to other purposes. *Amici* urge the Court to reverse the Court of Appeals' decision so that the moneys previously disbursed into the endowment fund continue to be used for their intended purpose.

STATEMENT OF FACTS

Amici adopt and incorporate the Statement of Facts set forth in the Merits Brief of Appellants Robert G. Miller, Jr., David W. Weinmann, and American Legacy Foundation ("Appellants"). *Amici* also offer their unique, historical insights about the establishment and funding of the endowment fund.

In November 1998, Attorney General Montgomery and the Attorneys General of 45 other states signed the Tobacco Master Settlement Agreement ("MSA") with the nation's largest tobacco manufacturers. The MSA resolved litigation that the Attorneys General had brought against the tobacco companies to recover state health care expenses incurred as a result of tobacco-related disease. Under the MSA, Ohio was to receive approximately $10.1 billion in payments through 2025 and additional future settlement payments in perpetuity.

After Ohio signed the MSA, Governor Taft and the General Assembly created a bipartisan group of Ohio legislators and other public officials in 1999 for the purpose of making recommendations regarding the appropriate use of Ohio's MSA payments. This group became known as the Tobacco Task Force (the "Task Force"). The Task Force engaged in months of research and analysis, and conducted a lengthy series of public meetings and deliberations, all of which culminated in the Task Force's issuance of its Final Report on October 6, 1999.

The Task Force's Final Report called for the General Assembly to create several separate funds into which the MSA payments would be made, with each fund using the moneys therein for a different purpose, such as construction of school facilities and funding biomedical research and technology. The Task Force recommended that these several funds, and any undisbursed moneys therein, be kept under the control of the General Assembly for reappropriation. As such, these funds would be expressly created in the state treasury.

The Task Force also concluded, however, that it was important to ensure that a portion of the moneys from the MSA payments be **committed in perpetuity** to the funding of tobacco use prevention and cessation programs for the protection of

Ohioans. All of the MSA funding had resulted from Attorney General Montgomery's efforts to recoup the hundreds of millions of dollars of medical expense incurred by the State as a result of tobacco related death and disease. Thus, the Task Force determined that good public policy required that at least a portion of the MSA moneys be permanently and irrevocably committed to the tobacco programs in a manner that would protect them from future efforts to redirect them to other agendas. The Task Force settled on an approach of recommending a sequestered trust fund outside the state treasury, like the state retirement system trusts, to protect it from legislative reappropriation. The Task Force proposed that this trust receive a one-time allocation as a nest egg with the resulting investment income being used to partially fund Ohio's anti-smoking programs into the indefinite future. It was fundamental to the Task Force's conclusions and recommendations that the moneys designated to support programs seeking prevention and cessation of tobacco use had to be protected from diversion in the future to other, more politically expedient uses.

To accomplish this objective, the Task Force recommended that the General Assembly:

- Establish a separate, permanent endowment fund, **which unlike the other funds proposed by the Task Force,** would be outside the state treasury.

- Disburse the MSA payments outright and unconditionally to the endowment fund.
- Limit the use of the assets of the endowment fund solely and exclusively for the purpose of funding tobacco prevention and cessation programs and research for the benefit of Ohio's tobacco users and youth.
- Establish a charitable foundation called the Tobacco Use Prevention and Control Foundation to act as the trustee of the endowment fund.
- Impose on the trustees of the Foundation fiduciary obligations to assure that the endowment fund is safeguarded and used only for its intended purpose.
- Permit disbursements from the endowment fund only upon the approval of the trustees of the Foundation.

In short, the Task Force sought to protect the endowment fund for its intended purpose by creating a structure like that protecting Ohio's state retirement funds from being diverted to other purposes: a permanent trust that is maintained outside the state treasury and is not subject to the General Assembly's control.

In February 2000, the 123rd General Assembly adopted the Task Force's recommendations when it enacted S.B. 192. Governor Taft signed the bill into law on March 3, 2000. S.B. 192 incorporated the Task Force's recommendations, including its recommendations regarding the establishment and funding of a permanent endowment fund for the purpose of funding tobacco cessation and prevention programs, which would be maintained outside of the state treasury. The General Assembly's adoption of the Task Force recommendations is reflected in the sections of S.B. 192 that were codified at R.C. 183.04, 183.07, and 183.08. Specifically, these sections created "the tobacco use prevention and control endowment fund, which shall be in the custody of the treasurer of state but shall not be a part of the state treasury," R.C. 183.08; created "the tobacco use prevention and control foundation," which was to act as "the trustee of the endowment fund," R.C. 183.04 and 183.08; and articulated that the sole purpose of the endowment fund is to fund research and treatment programs related to tobacco use prevention and cessation. R.C. 183.07. Other provisions of S.B. 192 also reflect the recommendations and intent of the Task Force in mandating that future "[d]isbursements from the fund shall be paid by the treasurer of the state only upon instruments duly authorized by the board of trustees of the foundation," that "[t]he endowment fund shall be used by the foundation to carry out its duties" and that "[t]he foundation shall be self-sustaining. . . ." R.C. 183.08.

Thus, in enacting S.B. 192, the General Assembly adopted the Task Force's objectives of creating the endowment fund as a permanent trust, making the Foundation the trustee of the endowment, establishing the purpose of the endowment to be exclusively the funding of tobacco use prevention and cessation programs and research, and, most importantly, providing for "disburse[ment]" of the trust assets outside the state treasury. The Task Force sought this express provision placing the moneys outside the state treasury knowing that Article II, Section 22 of the Ohio Constitution, defines the General Assembly's power of appropriation only in the context of moneys in the state treasury: "[n]o money shall be drawn ***from the treasury***, except in pursuance of a specific appropriation, made by law. . . ." (Emphasis added.) By placing the endowment fund outside the state treasury as provided in R.C. 183.08, and by directing "disburse[ment]" of the appropriated moneys to this fund outside the state treasury, S.B. 192 at Section 6, the General Assembly undertook to ensure, as the Task Force recommended, that the moneys in the endowment fund would not be subject to future diversion to other purposes.

The 123rd General Assembly, of course, understood perfectly well what the Task Force was recommending and the effect of its decision to disburse the moneys to a fund that "shall not be a part of the state treasury." R.C. 183.08(A). As is typical in the legislative process, the Ohio Legislative Service Commission prepared a series of analyses of S.B. 192 for lawmakers as they debated and considered this bill. Each of these five separate analyses expressly stated that S.B. 192, if enacted, would immunize the endowment fund moneys from future legislative action diverting them to other purposes. The Final Analysis is typical:

> The appropriated money [under proposed S.B. 192], together with any gifts or grants the Foundation receives, is to be placed into the Tobacco Use Prevention and Control Endowment Fund, which the act creates as a "custodial fund of the Treasurer of State" to carry out the duties of the Foundation. (***Money in a custodial fund of the Treasurer of State is not subject to appropriation by the General Assembly.***) The Foundation is the trustee of the endowment fund, and the Treasurer of State can pay disbursements from the fund only upon instruments duly authorized by the Foundation's board of trustees.
>
> [LSC Final Analysis of S.B. 192 at 6 (emphasis added) (Apx. pg. 1)]

The Ohio Office of Budget and Management also prepared a financial analysis of S.B. 192 titled "Ohio's Plan for Using the Tobacco Settlement Revenue" for consideration by the members of the 123rd General Assembly. It too explained that S.B. 192, if adopted, would protect the endowment fund from being diverted to other uses:

> The Endowment Fund is created in law as a custodial fund in the custody of the Treasurer of State. ***As with all other custodial funds, it is not considered to be in the state treasury and appropriations will not be made from it. . . .***
>
> [OBM March 6, 2000 Report at 3 (emphasis added)(Apx. pg. 23)]

Having been fully informed about the import of the proposed legislation, the 123rd General Assembly adopted S.B. 192. The uncodified sections of the legislation reflect the General Assembly's intent to actually "disburse" the appropriated moneys to the endowment fund in the manner proposed by the Task Force to protect them from reappropriation. Section 6 of the uncodified portion of S.B. 192 appropriated $234,861,033 of the then existing MSA proceeds to the Ohio Department of Health, but went on and expressly directed that Dr. Baird, the Director of the Department of Health, "shall disburse moneys appropriated in this appropriation item to the Tobacco Use Prevention and Control Endowment Fund created by section 183.08 of the Revised Code to be used by the Tobacco Use Prevention and Control Foundation to carry out its duties." Thus, the moneys in the endowment fund - the very same moneys that are the subject of the appeal pending before this Court - were not merely "appropriated" to the Department of Health but, in addition, the

Department of Health "disburse[d]" them "outside the state treasury." In short, they were expressly and unconditionally "disbursed" outside the state treasury, subject only to further disbursement by the trustees for the purposes of tobacco use prevention and cessation research and programs.

Once the money was disbursed to the endowment fund, it was spent. The General Assembly no longer had control over it.

ARGUMENT

Proposition of Law No. I: The Retroactivity Clause of the Ohio Constitution, Article II, Section 28, prohibits the General Assembly from divesting the equitable trust estate of, and depleting the previously disbursed monies held in, the Tobacco Use Prevention and Control Endowment Fund, which the General Assembly specifically established and funded in 2000 as a permanent trust outside the state treasury for lifesaving tobacco prevention and cessation programs.

Proposition of Law No. II: House Bill 544's purported liquidation and depletion of the Endowment Fund violates the Contracts Clauses of the United States Constitution, Article I, Section 10, and the Ohio Constitution, Article II, Section 28, by substantially impairing pre-existing trust rights and obligations.

Amici adopt and incorporate the arguments in support of the first two propositions of law set forth in Appellants' Merits Brief.

CONCLUSION

Amici offer this concise history of the Task Force's efforts, and the adoption of its recommendations by the 123rd General Assembly, as background for the Court's consideration of the important issues before it. *Amici* request the Court to reverse the court of appeals' decision and to reinstate the trial court's permanent injunction protecting the endowment fund for its intended and vitally important purpose.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via U.S. mail this ~~3rd~~ 4th day of ~~April~~ May HM, 2010 upon:

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APPENDIX

Nonappropriation Provisions of

Am. Sub. S.B. 192

123rd General Assembly

(As Passed by the General Assembly)

Sens. **Ray (by request), Drake, Finan**

Reps. **Corbin, Womer Benjamin, Mead, Peterson, Metzger, Carey, Hoops, Mottley, Vesper, Goodman, Ogg, Evans, Boyd, Britton, Barnes**

Effective date: *

ACT SUMMARY

- Provides for the distribution of payments that the state is expected to receive from 2000 through 2025 under an agreement with the major American tobacco manufacturers in settlement of state lawsuits against the industry.

- Through 2012, distributes the payments to trust funds for school facility construction and renovation, tobacco use cessation programs, biomedical research, other public health programs, assistance to tobacco-growing areas, and other specified purposes, and from 2013 to 2025 distributes a portion of the payments to an endowment fund for school facility construction and renovation.

- Requires the Director of Budget and Management to submit two-year revenue and expenditure estimates for the tobacco settlement payments to the General Assembly each even-numbered year, in anticipation of the passage of separate biennial budget acts authorizing the expenditure of this money.

- Imposes restrictions on smoking or using tobacco in specifically identified state correctional institutions, and requires the Department of Rehabilitation and Correction, subject to available funding, to provide

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

EXHIBIT

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smoking and tobacco usage cessation programs for prisoners at all state correctional institutions.

- Requires the Legislative Budget Office to study issues concerning the availability of prescription drugs for low-income elderly Ohioans who suffer from tobacco-related illnesses.

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CONTENT AND OPERATION

Tobacco Master Settlement Agreement

In November 1998 the Ohio Attorney General, along with the attorneys general of 45 other states, five U.S. territories, and the District of Columbia, entered into an agreement with the major American tobacco manufacturers to settle state lawsuits against the industry. Under the agreement, Ohio could receive almost $10.1 billion in payments from the industry during the years from 2000 through 2025. The act does not address payments that may be made by the manufacturers to the state after 2025.

Establishing funds to receive the payments

(R.C. 183.01(B) and 183.02; Section 12)

The act provides that all payments made to the state under the agreement are to be deposited into the state treasury to the credit of the Tobacco Master Settlement Agreement Fund. The Controlling Board established this fund in March 1999; the act establishes the fund in statute and requires that interest earned on the fund be credited to the fund. Assuming that the state does not receive in any year payments that total more than the amount estimated by the Office of Budget and Management for that year in the final report of the Governor's Tobacco Task Force, all money in the fund, including interest, is to be transferred by the Director of Budget and Management to eight other funds. The act establishes them in the state treasury and provides that they will retain their interest earnings. Two of these eight funds are to receive the following amounts or percentages of the tobacco payments before any of the other funds receive their shares:

(1) Education Facilities Trust Fund, $2.4 billion through 2012;

(2) Education Facilities Endowment Fund, $65 million through 2012 and specified percentages of the payments from 2013 to 2025.

If in any year from 2001 through 2012 the payments and interest credited to the Tobacco Master Settlement Agreement Fund during the year amount to less than the amounts required to be transferred to the Education Facilities Trust Fund and the Education Facilities Endowment Fund that year, the act prohibits the Director of Budget and Management from making any transfers at all from the Tobacco Master Settlement Agreement Fund.

If in any year from 2000 through 2025 the payments credited to the Tobacco Master Settlement Agreement Fund during the year exceed the amount estimated by the Office of Budget and Management for that year in the final report of the Governor's Tobacco Task Force, the excess is to be transferred to the Income Tax Reduction Fund. The percentage distributions of money in the Master Settlement Agreement Fund to the funds created by the act are to be made after accounting for this transfer. Under continuing law, if the balance in the Income Tax Reduction Fund exceeds 0.35% of the amount that the Director of Budget and Management estimates will be received from the personal income tax during the year (without regard to any tax reduction that may occur due to the Income Tax Reduction Fund mechanism), the Tax Commissioner must distribute the excess through an across-the-board reduction in income tax rates (R.C. 131.44, not in the act).

Except with regard to the first payment received in 2000 (for which the act creates a special allocation scheme), the other six funds that the act creates are to receive specified percentages of the sums that remain in the Tobacco Master Settlement Agreement Fund after the first two funds receive their shares. These six funds are:

(1) Tobacco Use Prevention and Cessation Trust Fund;

(2) Southern Ohio Agricultural and Community Development Trust Fund;

(3) Law Enforcement Improvements Trust Fund;

(4) Ohio's Public Health Priorities Trust Fund;

(5) Biomedical Research and Technology Transfer Trust Fund;

(6) Education Technology Trust Fund.

Below is a detailed discussion of each of these eight funds and their uses and management. The references to "years" in this analysis, as in the act, are to state fiscal years.

Education Facilities Trust Fund

(R.C. 183.02(F) and 183.26)

The Education Facilities Trust Fund is to receive the following sums:

Year	**Amount**
2000	$133,062,504.95
2001	128,938,732.73
2002	185,804,475.78
2003	180,561,673.11
2004	122,778,219.49
2005	121,389,325.80
2006	120,463,396.67
2007	246,389,369.01

Year	Amount
2008 to 2011	267,531,291.85
2012	110,954,544.28

Money credited to the trust fund is to be used to pay costs of, or to provide the state's share of the costs of, constructing, renovating, or repairing primary and secondary schools.

Education Facilities Endowment Fund

(R.C. 183.02(G) and 183.27)

The Education Facilities Endowment Fund is, as its name suggests, to operate as an endowment fund. However, it is to be part of the state treasury rather than a custodial fund of the Treasurer of State. The act states that it is the intent of the General Assembly to maintain the endowment fund as a permanent source of revenue for constructing, renovating, or repairing primary and secondary schools in the state. At the beginning of each quarter, all investment earnings of the endowment fund during the preceding quarter are to be credited to the Education Facilities Trust Fund for expenditure on these purposes.

From 2000 through 2012, $5 million per year is to be transferred to the endowment fund. From 2013 through 2025, the following percentages of the Tobacco Master Settlement Agreement Fund are to be credited to the endowment fund:

Year	Percentage
2013	30.22
2014	33.36
2015 through 2025	40.90

Tobacco Use Prevention and Cessation Trust Fund

(R.C. 102.02, 183.02(A), 183.03 through 183.09, 183.30, and 183.31; Section 13)

After the first two trust funds receive the amounts allocated to them, the other six trust funds are to receive specified percentages of the balance that remains in the Tobacco Master Settlement Agreement Fund. (An exception is made for the allocation of the first payment received in 2000.) The first of these six funds, the Tobacco Use Prevention and Cessation Trust Fund, is to receive the following amount and percentages:

Year	Amount or Percentage
2000 (first payment credited)	$104,855,222.85
2000 (remaining balance)	70.30%
2001	62.84
2002	61.41
2003	63.24
2004	66.65
2005	66.24
2006	65.97
2012	56.01

The act contemplates that the General Assembly will from time to time appropriate money in this fund for a state agency to be called the Tobacco Use Prevention and Control Foundation. The appropriated money, together with any gifts or grants the Foundation receives, is to be placed into the Tobacco Use Prevention and Control Endowment Fund, which the act creates as a "custodial fund of the Treasurer of State" to carry out the duties of the Foundation. (Money in a custodial fund of the Treasurer of State is not subject to appropriation by the General Assembly.) The Foundation is the trustee of the endowment fund, and the Treasurer of State can pay disbursements from the fund only upon instruments duly authorized by the Foundation's board of trustees. At the request of the Foundation, the Treasurer of State must select and contract with one or more investment managers to invest money in the fund that is not needed for current operations. The eligible list of investments for the money is the same as for the Public Employees Retirement System.

The Foundation is to be a self-sustaining entity, although the act does not limit the expenditures of the endowment fund to its investment earnings. The act does declare, however, that the Foundation should not expect to receiving funding from the state beyond the amounts appropriated from the Tobacco Use Prevention and Cessation Trust Fund. Also, not more than 5% of the total expenditures of the Foundation in a fiscal year are to be for administration, and not more than 10% of the funding that a public or private agency receives from the Foundation may be spent on administration.

The Foundation is required to prepare a plan, covering a period of at least five years and updated annually, to reduce the use of tobacco by Ohioans. Emphasis is to be placed on reducing the use of tobacco by youth, minority and regional populations, pregnant women, and others who may be disproportionately affected by the use of tobacco. At a minimum, the plan is to contain baseline data for tobacco use by Ohioans and establish outcome objectives for reducing tobacco use by Ohioans during the period covered by the plan. The plan also can provide for periodic surveys to measure tobacco use and behavior toward tobacco use by Ohioans.

In addition, the plan can describe youth tobacco consumption prevention programs that are to be eligible for consideration for grants and can set forth the criteria by which applications for such grants will be considered by the Foundation. These programs can include (1) media campaigns directed to youth to prevent underage tobacco consumption, (2) school-based education programs to prevent youth tobacco consumption, (3) community-based youth programs involving youth tobacco consumption prevention through general youth development, (4) retailer education and compliance efforts to prevent youth tobacco consumption, and (5) mentoring programs designed to prevent or reduce tobacco use by students. Copies of the plan must be available to the public.

Pursuant to the plan, the Foundation is required to carry out, or provide funding for private or public agencies to carry out, research and programs related to tobacco use prevention and cessation. For this purpose, it is required to establish an objective process to determine which research and program proposals to fund and, when appropriate, provide for them to be peer-reviewed. No program is to be carried out or funded by the Foundation unless there is research indicating that the program is likely to achieve the results desired. Any research or program funded by the Foundation is to be goal-oriented and independently and objectively evaluated annually as to whether it is meeting its goals. The Foundation is to contract for such evaluations and to adopt rules under the Administrative Procedure Act regarding conflicts of interest in the research and programs it funds. It also must endeavor to coordinate its research and programs with the efforts of other state agencies to reduce tobacco use by Ohioans. In this regard, the act requires any state agency that conducts a survey that measures tobacco use or behavior toward tobacco use by Ohioans to share the results with the Foundation.

Within 90 days after the end of each state fiscal year, the Foundation must submit to the Governor and the General Assembly (1) a report of the activities of the Foundation during the preceding fiscal year and an independent and objective evaluation of the progress being made by the Foundation in reducing tobacco use by Ohioans and (2) a financial report of the Foundation for the preceding fiscal year, which must include (a) information on the amount and percentage of overhead and administrative expenditures compared to programmatic expenditures and (b) an independent auditor's report on the financial statements of the Foundation, which must be prepared in accordance with generally accepted accounting principles for governmental entities.

The general management of the Foundation is to be vested in a 20-member board of trustees consisting of (1) the Director of Health, (2) Executive Director of the Commission on Minority Health, (3) Attorney General, (4) eight health professionals, health researchers, or representatives of health organizations--two of them appointed by the Governor, two by the Speaker of the House, one by the Minority Leader of the House, two by the President of the Senate, and one by the Minority Leader of the Senate, (5) one person with experience in financial planning and accounting and one person with experience in media and mass marketing--both appointed by the Governor, and (6) seven persons--also to be appointed by the Governor--each from a list of at least three individuals recommended to the Governor by the American Cancer Society, American Heart Association, American Lung Association, Association of Hospitals and Health Systems, Ohio State Medical Association, Association of Ohio Health Commissioners, and Ohio Dental Association. All the members of the board except the ex officio members (the Director of Health, Executive Director of the Commission on Minority Health, and Attorney General) are to be appointed with the advice and consent of the Senate and are to serve five-year terms (after initial terms of different lengths designed to result in staggered terms).

The board of trustees is to select a chairperson from among its members. The members are to serve without compensation but are to be reimbursed for the reasonable and necessary expenses they incur in the conduct of Foundation business. The board is also to appoint and set the compensation of an executive director (who must be bonded) and the other employees of the Foundation. They are to be state employees and serve in the unclassified service (that is, they are to be exempt from examination and civil service rules applicable to employees in the classified service). Both the board and its executive director must file financial disclosure statements, which are not to be kept confidential, with the appropriate state ethics commission.

Southern Ohio Agricultural and Community Development Trust Fund

(R.C. 102.02, 183.02(C), 183.11 through 183.17, 183.30, and 183.31; Sections 14 and 19)

The second of the six funds that are to receive the balance of the amount that remains in the Tobacco Master Settlement Agreement Fund each year is the Southern Ohio Agricultural and Community Development Trust Fund. It is to receive the following percentages of that balance (but, again, an exception is made for the allocation of the first payment received in 2000):

Year	**Percentage**
2000 (first payment credited)	5.00%
2000 (remaining balance)	8.73
2001	8.12
2002	9.18
2003	8.91
2004	7.84
2005	7.79
2006	7.76
2007	17.39
2008 to 2011	17.25

Here, too, the act contemplates that the General Assembly will appropriate money in the fund for the use of a foundation--the Southern Ohio Agricultural and Community Development Foundation.[1] This money, together with any gifts or grants the Foundation receives, is to be placed into an endowment fund--the Southern Ohio Agricultural and Community Development Foundation Endowment Fund--which the act creates as a custodial fund of the Treasurer of State to be used by the Foundation to carry out its duties. The Foundation is also to use the endowment fund's investment earnings for this purpose. If the Foundation concludes, in a report it is to make to the Governor and the General Assembly on or before July 1, 2010, that the Foundation needs additional funding for its work, it may request that provision be made for continuing to transfer money (beyond 2011) to the trust fund from the Tobacco Master Settlement Agreement Fund.

[1] *For the act's purposes, "southern Ohio" includes any county in the state where tobacco has traditionally been grown.*

As with the Tobacco Use Prevention and Control Foundation, the Southern Ohio Agricultural and Community Development Foundation is the trustee of its endowment fund, and the Treasurer of State can pay disbursements from the fund only upon instruments duly authorized by the Foundation's board of trustees. At the request of the Foundation, the Treasurer of State must select and contract with one or more investment managers to invest money in the fund that is not needed for current operations. The eligible list of investments for the money is the same as for the Public Employees Retirement System.

The charge of the Foundation is to endeavor to replace the production of tobacco in southern Ohio with the production of other agricultural products and to mitigate the adverse economic impact of reduced tobacco production in the region by preparing, implementing, and keeping current a plan to develop means for tobacco growers to grow other agricultural products voluntarily. The plan may include:

(1) Increasing the variety, quantity, and value of agricultural products other than tobacco that are produced in those parts of Ohio in which tobacco has traditionally been grown;

(2) Preserving agricultural land and soils in those same parts of Ohio;

(3) Making strategic investments in communities that will be affected by the reduction in the demand for tobacco;

(4) Providing education and training assistance to tobacco growers to help them make the transition out of tobacco production.

The Foundation is to make grants or loans to individuals, public agencies, or privately owned companies to carry out the plan and to adopt rules under the Administrative Procedure Act regarding conflicts of interest in the making of grants or loans. The Foundation is prohibited from using money from the Southern Ohio Agricultural and Community Development Foundation Endowment Fund for the direct production costs of growing tobacco. Not more than 5% of the total expenditures of the Foundation in a fiscal year are to be for administration, and not more than 10% of any grant or loan that an individual, public agency, or privately owned company receives from the Foundation may be spent on administration. Copies of the Foundation's plan must be made available to the public.

Within 90 days after the end of each state fiscal year, the Foundation must submit to the Governor and General Assembly (1) a report of its activities during the preceding fiscal year, including an independent evaluation of the progress the Foundation is making in carrying out its duties and (2) a financial report of the

Foundation for the preceding fiscal year, which must include (a) information on the amount and percentage of overhead and administrative expenditures compared to programmatic expenditures and (b) an independent auditor's report on the financial statements of the Foundation, which must be prepared in accordance with generally accepted accounting principles for governmental entities.

The general management of the Foundation is vested in a 12-member board of trustees consisting of (1) four ex officio members (that is, members who are on the board by virtue of their official positions)--(a) the Director of Agriculture, (b) Director of Development, (c) Executive Director of the Ohio Rural Development Partnership, and (d) Director of the Ohio State University Extension, (2) two residents of the major tobacco-producing counties with experience in local economic development or community development appointed by the Governor, (3) three active farmers from major tobacco-producing counties appointed by the Governor, two of whom must be from a list of at least four individuals recommended by the Ohio Farm Bureau and one of whom must be from a list of at least two individuals recommended by the Farmers' Union, and (4) three active tobacco farmers from major tobacco-producing counties appointed by the Governor from a list of at least six individuals recommended by the Ohio Tobacco Growers Association.[2] All the appointees except the ex officio members are to be appointed with the advice and consent of the Senate and serve five-year staggered terms. Foundation members are to serve without compensation but are to be reimbursed for the reasonable and necessary expenses they incur in the conduct of Foundation business.

The board of trustees is to appoint and set the compensation of an executive director, who is to be bonded, and other employees of the Foundation. They are to be state employees and serve in the unclassified service. Both the board and the executive director must file financial disclosure statements, which are not to be kept confidential, with the appropriate state ethics commission. The board must select a chairperson from among its members, but the Director of Agriculture is to call and preside over the board's initial organizational meeting.

Law Enforcement Improvements Trust Fund

(R.C. 183.02(B) and 183.10)

The third of the six funds that are to receive the balance of the amount that remains in the Tobacco Master Settlement Agreement Fund after the educational

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[2] *"Major tobacco-producing counties" are defined as any of the counties, ranked in descending order of pounds produced, where 95% of the 1998 burley tobacco quota for the state was produced.*

facilities allocations is the Law Enforcement Improvements Trust Fund (again, with an exception for the first payment in 2000). It is to receive $10 million from the first payment credited in 2000, 5.41% of the remaining balance in 2000, and 2.32% of the remaining balance in 2001. The money is to be used by the Attorney General to maintain, upgrade, and modernize the law enforcement training and laboratory facilities of the office of the Attorney General.

Ohio's Public Health Priorities Trust Fund

(R.C. 183.02(D) and 183.18)

The fourth of the six funds that are to receive the balance of the amount that remains in the Tobacco Master Settlement Agreement Fund each year--Ohio's Public Health Priorities Trust Fund--is to receive the following percentages:

Year	Percentage
2000	5.41
2001	6.68
2002	6.79
2003	6.90
2004	7.82
2005	8.18
2006	8.56
2007	19.83
2008	19.66
2009	20.48
2010	21.30
2011	22.12
2012	10.47

Money credited to the fund is to be used for five purposes:

(1) Minority health programs, on which at least 25% of the annual appropriations from the trust fund must be spent;

(2) Enforcing the state laws that make it illegal to (a) distribute cigarettes or other tobacco products to a minor, (b) distribute cigarettes or other tobacco

products in any place that does not conspicuously post notice that their distribution to a minor is prohibited by law, or (c) sell or offer to sell cigarettes or other tobacco products by or from a vending machine except as authorized or prescribed by law;

(3) Alcohol and drug abuse prevention programs, including programs for adults and juvenile offenders in state institutions and aftercare programs;

(4) Partial reimbursement, on a county basis, of (a) hospitals, free medical clinics, and similar organizations or programs that provide free, uncompensated care to the general public, and (b) counties that pay private entities to provide such care using revenue from a property tax levied at least in part for that purpose;

(5) A non-entitlement program funded through the Department of Health to provide emergency assistance in the form of medication or oxygen to seniors whose health has been adversely affected by tobacco use and whose income does not exceed 100% of the federal poverty guidelines. Five percent of the annual appropriation from the trust fund is to be expended on the program. However, if federal funding becomes available for this purpose, the Department is to utilize the federal funding for the medication and oxygen program and the trust fund appropriation is to be used for the other four purposes listed above. If the federal program requires members of the targeted senior population group to pay a premium or copayment to obtain medication or oxygen, the Director of Health must recommend to the General Assembly whether the trust fund's 5% set-aside should be used to pay the premiums or copayments.

Biomedical Research and Technology Transfer Trust Fund

(R.C. 102.02, 183.02(E), 183.19 through 183.25, 183.30, and 183.31; Section 15)

The fifth of the six funds that are to receive the balance of the amount that remains in the Tobacco Master Settlement Agreement Fund each year is the Biomedical Research and Technology Transfer Trust Fund. It is to receive the following percentages of that balance:

Year	Percentage
2000	2.71
2001	14.03
2002	13.29
2003	12.73
2004	13.78

Year	Percentage
2005	14.31
2006	14.66
2007	49.57
2008 to 2011	45.06
2012	18.77

The money in this fund is to be administered by a body to be called the Biomedical Research and Technology Transfer Commission, which the act creates within the Ohio Board of Regents. Periodically the Commission is to make strategic assessments of the types of state investments in biomedical research and biotechnology in Ohio that would be likely to create jobs and business opportunities and produce the most beneficial long-term improvements in the public health of Ohioans. One area of focus for the Commission is to be biomedical research and biotechnology initiatives that address tobacco-related illnesses. These assessments are to be used by the Commission to guide its decisions on awarding grants to individuals, public agencies, private companies or organizations, or joint ventures for any of a broad range of activities related to biomedical research and technology transfer. The assessments are to be available to the public.

The Commission is to establish a competitive process for the awarding of grants that is designed to fund the most meritorious proposals and, when appropriate, provide for peer review of proposals. Priority is to be given to proposals that leverage additional private and public funding resources. Not more than 5% of the total expenditures of the Commission in a fiscal year are to be for administration, and not more than 10% of any grant that an individual, public agency, private company or organization, or joint venture receives from the Commission may be spent on administration. The Commission is to adopt rules under the Administrative Procedure Act regarding conflicts of interest in the awarding of grants and, when appropriate, coordinate its activities with those of the Tobacco Use Prevention and Control Foundation. Within 90 days after the end of each state fiscal year, the Commission is to submit to the Governor and the General Assembly a report of its activities during the preceding fiscal year.

The Commission is to consist of 25 members as follows:

(1) The Chancellor of the Board of Regents;

(2) The Director of Development;

(3) The Director of Health;

(4) The Executive Director of the Commission on Minority Health;

(5) The Director of Budget and Management, or the Director's designee;

(6) Twelve members, who must not be or represent potential recipients of grants from the Commission. Of these (a) six are to be appointed by the Governor, at least two of whom must be experts in commercializing the results of biomedical research, (b) two are to be appointed by the Speaker of the House and two by the President of the Senate, and (c) one is to be appointed by the Minority Leader of the House and one by the Minority Leader of the Senate.

(7) Eight nonvoting members appointed by the Governor, representing Ohio's biomedical research institutions.

The appointments of the Governor are to be with the advice and consent of the Senate, and all but the ex officio members are to serve five-year staggered terms. Before making their appointments, the Governor, Speaker, President, and Minority Leaders are all required to solicit recommendations, on the appointments they are to make, from the state's medical colleges, dental colleges, and medical research institutions, the National Institutes of Health, and other sources familiar with experts in the field of biomedical research and in commercializing the results of such research. The members of the Commission are to serve without compensation but are to be reimbursed for the reasonable and necessary expenses they incur in the conduct of Commission business. The Governor is to appoint the Commission's chairperson from among its members, and the chairperson serves in that role at the pleasure of the Governor.

The Board of Regents is to provide office space and facilities for the Commission, and any administrative costs associated with the operation of the Commission are to be paid from the trust fund. The Commission is to appoint and set the compensation of an executive director and other employees of the Commission. Both the executive director, who must give a fidelity bond to the state, and the other employees of the board are to be state employees and to serve in the unclassified service. The members and executive director of the Commission must file financial disclosure statements, which are not to be kept confidential, with the appropriate state ethics commission.

<u>Education Technology Trust Fund</u>

(R.C. 183.02(H) and 183.28)

The last of the six funds that are to receive the balance of the amount that remains in the Tobacco Master Settlement Agreement Fund each year and is the Education Technology Trust Fund. The money is to be used to pay costs of new and innovative technology for both primary and secondary education (including chartered nonpublic schools) and higher education (including state institutions of higher education and private nonprofit institutions of higher education certified by the Board of Regents). The percentages of the balance credited to the Tobacco Master Settlement Agreement Fund that are to be transferred to the Education Technology Trust Fund are:

Year	Percentage
2000	7.44
2001	6.01
2002	9.33
2003	8.22
2004	3.91
2005	3.48
2006	3.05
2007	13.21
2008	18.03
2009	17.21
2010	16.39
2011	15.57
2012	14.75

Prohibition against expenditures for lobbying and political activity

(R.C. 183.021)

The act prohibits any money from the Tobacco Master Settlement Agreement Fund from being expended to hire a legislative agent or executive agency lobbyist, or to support or oppose candidates, ballot questions, referendums, or ballot initiatives. However, the act specifies that this prohibition does not prevent (1) the members of the board of trustees, executive director, or employees of the Tobacco Use Prevention and Control Foundation, (2) the members of the board of trustees, executive director, or employees of the Southern Ohio

Agricultural and Community Development Foundation, or (3) the members, executive director, or employees of the Biomedical Research and Technology Transfer Commission from advocating on behalf of the specific objectives of a program funded with Master Settlement Agreement revenue.

Biennial tobacco budget bill

(R.C. 107.03, 126.02, and 126.022)

The act contemplates that future General Assemblies will pass a separate biennial budget bill for Master Settlement Agreement revenue in the second year of their sessions. Not later than four weeks after the General Assembly convenes in each even-numbered year, the Director of Budget and Management is to prepare and recommend to the General Assembly (1) estimates of revenues from, or derived from, payments to the state under the tobacco settlement and (2) estimates of expenditures of those revenues for the biennium beginning on the following first day of July. The Director must obtain the concurrence of the Governor in the estimates. Each state agency affected by the revenues or expenditures must submit to the Director any related information the Director requires, in a form and at times prescribed by the Director.

Exclusion from future funding requirement for school district facilities

(R.C. 107.031)

Under continuing law, in July 2001 and every six years afterward, the Speaker of the House and President of the Senate are required to appoint three members each to a committee to select a rational methodology for calculating the costs of an adequate educational system for the ensuing six-year period. The first report of the committee is due no later than July 2002. Until the first report is made, the Governor is required to ensure that the budget recommendations made by the Governor and the Office of Budget and Management to the General Assembly each biennium include recommendations for appropriations to the Ohio School Facilities Commission. These appropriations must aggregate not less than \$300 million per fiscal year for constructing, acquiring, replacing, reconstructing, or adding to classroom facilities. The act provides that this \$300 million per fiscal year does not include recommendations for appropriations of tobacco settlement money from the Educational Facilities Trust Fund.

Investment of amounts needed to meet current demands

(R.C. 183.29)

The act requires the Treasurer of State to keep all money that is received from Master Settlement Agreement payments or from distributions that the act requires to be made, and that is needed to meet current demands for the money, in public depositories of the so-called "active deposits" of state money. Active deposits are placed in commercial accounts that are payable on demand, negotiable order of withdrawal accounts, and money market deposit accounts. This requirement does not apply to any petty cash funds.

Exemption from Sunset Law

(R.C. 183.04, 183.12, and 183.20)

The act specifies that the State Agency Sunset Law does not apply to the Tobacco Use Prevention and Control Foundation, Southern Ohio Agricultural and Community Development Foundation, or Biomedical Research and Technology Transfer Commission. This law generally requires the expiration of state agencies within four years of their creation, unless renewed by the General Assembly.

General Revenue Fund appropriations prohibited

(R.C. 183.33)

The act provides that no money can be appropriated or transferred from the General Revenue Fund (GRF) to any of the funds the act creates, namely the Tobacco Master Settlement Agreement Fund, Tobacco Use Prevention and Cessation Trust Fund, Tobacco Use Prevention and Control Endowment Fund, Law Enforcement Improvements Trust Fund, Southern Ohio Agricultural and Community Development Trust Fund, Southern Ohio Agricultural and Community Development Foundation Endowment Fund, Ohio's Public Health Priorities Trust Fund, Biomedical Research and Technology Transfer Trust Fund, Education Facilities Trust Fund, Education Facilities Endowment Fund, or Education Technology Trust Fund. In addition, no GRF money can be otherwise appropriated or transferred for the use of the Tobacco Use Prevention and Control Foundation or the Southern Ohio Agricultural and Community Development Foundation.

Tobacco Oversight Accountability Panel

(Section 18)

The act establishes a seven-member Tobacco Oversight Accountability Panel to develop appropriate achievement benchmarks for each of the trust funds the act creates. By December 31, 2000, the Panel must submit a report describing the achievement benchmarks to the Governor, Speaker and Minority Leader of the

House of Representatives, President and Minority Leader of the Senate, Chairpersons and Ranking Minority Members of the House and Senate Finance Committees, and Director of the Legislative Service Commission. The Panel ceases to exist after submitting the report.

The Panel is to consist of the Director of Budget and Management or the Director's designee, three members of the House of Representatives appointed by the Speaker of the House (no more than two of whom can belong to the same political party as the Speaker), and three members of the Senate appointed by the President of the Senate (no more than two of whom can belong to the same political party as the President).

Request to future General Assemblies

(Section 17)

In the act, the 123rd General Assembly requests future General Assemblies, when they consider how to spend and invest money credited to the Tobacco Master Settlement Agreement Fund after 2012, to give due regard to the recommendations of the Governor's Tobacco Task Force. The act specifies that the Task Force recommended allocating the tobacco settlement revenue received by the state through 2025 as follows:

--44.7% for rebuilding and renovating primary and secondary schools;

--17.8% for investments in biomedical research and technology transfer;

--14.8% for tobacco use prevention and cessation programs;

--10.1% for other public health priorities;

--10% for education technologies;

--2.3% for assisting tobacco farmers and their communities;

--0.2% for law enforcement improvements.

Joint committee to reexamine the use of Master Settlement Agreement funds

(R.C. 183.32)

The act requires that every six years beginning in 2012, a joint legislative committee must determine if the act's distribution and uses of Master Settlement Agreement revenue adequately reflect the state's priorities. The President of the Senate is to appoint three senators and the Speaker of the House is to appoint three representatives to the committee. No more than two of the President's or Speaker's appointees can be from the same political party as the President or Speaker.

The committee is to be appointed in January, and within nine months of its formation must report to the General Assembly any changes it recommends be made to the distribution and uses of Master Settlement Agreement funds.

Tobacco use in state correctional institutions

(R.C. 5145.32)

The act imposes restrictions on smoking or using tobacco in specifically identified state correctional institutions.[3] Violation of the restrictions is not a criminal offense, but is subject to enforcement procedures and disciplinary measures that the Department of Rehabilitation and Correction is to establish by rule. The restrictions are as follows:

--No person can smoke or use tobacco in a building at the North Coast Correctional Treatment Facility in Grafton, Lake Erie Correctional Institution, Toledo Correctional Institution, Hocking Correctional Facility, Oakwood Correctional Facility, Northeast Pre-release Center, Franklin Pre-release Center, or Montgomery Education Pre-release Center. The Department can designate locations at which it is permissible to smoke or use tobacco outside of a building at these institutions.

--No person can smoke, use, or possess tobacco or have tobacco under the person's control on any property under the control of the Corrections Medical Center in Columbus or Ohio State Penitentiary in Youngstown. That is, these institutions are to be tobacco-free.

--At every other state correctional institution, the Director of Rehabilitation and Correction must designate at least one tobacco-free housing area. No person can smoke or use tobacco in such an area.

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[3] *For this section of the act, to "smoke" means to burn any substance containing tobacco, including a lighted cigarette, cigar, or pipe, and to "use tobacco" means to chew or maintain any substance containing tobacco, including smokeless tobacco, in the mouth to derive the effects of tobacco. A "state correctional institution" means any institution or facility that is operated by the Department of Rehabilitation and Correction and that is used for the custody, care, or treatment of criminal, delinquent, or psychologically or psychiatrically disturbed offenders, including a prison that is privately operated and managed under contract with the Department.*

The act also requires the Department to provide smoking and tobacco usage cessation programs for prisoners at all state correctional institutions, subject to available funding. In addition, the Director is required to review the practicality of eliminating access to smoking or tobacco usage in specialized units to which the act's prohibitions do not apply.

Prescription drug study

(Section 16)

The act requires the Legislative Budget Office (LBO) to study issues concerning the availability of prescription drugs for low-income elderly Ohioans who suffer from tobacco-related illnesses. LBO is to report to the General Assembly on its study within one year of the act's effective date.

The report must provide information on all of the following:

--What public and private resources and methods currently are used by low-income elderly Ohioans to obtain prescription drugs? The role of Medicaid (including PASSPORT), Medicare, other federal programs, private health insurance, and health clinics and hospitals must be examined.

--What are pertinent issues concerning prescription drug cost, usage, and research and development? Average annual drug costs per person, average annual costs per prescription, and trends for these two averages are to be determined. The report also must present information on drugs with the highest volume usage and drugs with the highest cost.

--How do physician and managed care practices affect prescription drug cost and availability?

--What are other states doing in this regard, and how do the other states pay for it?

LBO is not to include recommendations for legislative action in the report.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	10-12-99	p.	1049
Reported, S. Finance & Financial Institutions	11-02-99	p.	1133
Passed Senate (17-16)	11-09-99	pp.	1153-1155

Reported, H. Finance & Appropriations	12-08-99	pp.	1436-1437
Passed House (79-10)	12-09-99	pp.	1448-1457
Senate refused to concur in House amendments (8-18)	12-09-99	pp.	1244-1245
House requested conference committee	12-14-99	pp.	1464-1465
Senate acceded to request for conference committee	12-16-99	p.	1255
Senate agreed to conference committee report (21-12)	02-16-00	pp.	1393-1405
House agreed to conference committee report (87-9)	02-16-00	pp.	1592-1604

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Ohio's Plan for Using the Tobacco Settlement Revenue

Prepared by the Ohio Office of Budget and Management, March 6, 2000

Summary of the Tobacco Settlement

In November 1998, the Attorneys General of 46 states, five U.S. territories, and the District of Columbia signed the Master Settlement Agreement (MSA) with the nation's largest tobacco manufacturers. This signaled the end of litigation brought by the Attorneys General against the manufacturers in 1996 for state health care expenses attributed to smoking related claims. The remaining four states (Florida, Minnesota, Mississippi and Texas) settled separately.

The Amount and Timing of Tobacco Settlement Payments to Ohio

Based on estimates provided by the National Association of Attorneys General (NAAG) at the time of the Settlement, which are shown on Table 1 (refer to page 12), under the MSA, the Base Payments to the states are estimated to total $206 billion through 2025. Ohio's share of the Base Payments is 5.04%, which through 2025 is estimated to be $9.869 billion. Although the NAAG estimates end with 2025, under the terms of the MSA payments are to continue in perpetuity.

While Ohio's share of the Base Payments will not change over time, the amount of the annual payment is subject to a number of adjustment factors including, among others, an inflation adjustment and a volume adjustment. Some of these adjustments (for example, inflation) should contribute to an increase in the payments and others (for example, volume) may decrease the payments. But the net effect of these adjustment factors on future payments is very uncertain, which makes it difficult to estimate what Ohio's real payments will be. It should be kept in mind that the volume factor will probably be affected by the efforts of Ohio, other states, and the federal government to reduce tobacco consumption.

In addition to a share of the Base Payments, Ohio will receive an estimated $239.5 million between 2008 and 2017 from the Strategic Contribution Fund. The Strategic Contribution Fund was established to reward states that played leadership roles in the tobacco litigation and settlement negotiations. Allocations from this $8.61 billion fund are based on a state's contribution to the litigation and settlement with the tobacco companies. Ohio will receive ten annual payments of an estimated $23.9 million from the Strategic Contribution Fund beginning in FY 2008. These payments, which are shown separately on Table 1, are also subject to the adjustment factors in the MSA.

Ohio's Plan for Using the Tobacco Settlement Revenue

In March 1999, a bipartisan 15-member Task Force was created at the urging of Governor Bob Taft. The Task Force issued a report October 5, 1999 making recommendations to the Governor and the General Assembly on how Ohio should use the MSA revenue.

Am. Sub. S.B. 192 is the legislation that was passed by the 123rd Ohio General Assembly in February and was signed into law by Governor Taft March 3, 2000 in response to the Task Force's recommendations.

Am. Sub. S.B. 192 contains a comprehensive plan for using the state's tobacco revenue through FY 2012. For FY 2012 through FY 2025 the bill contains a plan for using part of the revenue. Beyond 2025 no provision is made in the bill for using the revenue.

The bill creates a number of funds, describes how Ohio's tobacco settlement moneys are distributed among the funds, and specifies how the moneys are to be used.

The bill also creates three new entities. The Biomedical Research and Technology Transfer Commission is created in the Board of Regents. The other two entities that are created are the Tobacco Use Prevention and Control Foundation and the Southern Ohio Agricultural and Community Development Foundation. The responsibilities of these three entities are described in more detail below.

Table 2 (refer to page 13) shows how SB 192 allocates Ohio's MSA payments among 7 trust funds and one endowment fund. The Education Facilities Trust Fund (Column 4 on Table 2) and the Education Facilities Endowment Fund (Column 5) will receive fixed dollar amounts through FY 2012 while the other trust funds will receive percentages of what remains after the education facilities obligations are met. Starting in FY 2013 and continuing through FY 2025, the Education Facilities Endowment Fund will receive a percentage of the amount received annually by the state. The state must eventually decide how to use the rest of the future MSA payments.

Table 3 (refer to page 14) shows the result of applying the distribution plan in Table 2 to the estimated MSA payments in Table 1. Table 3 shows how much tobacco revenue will go to each fund in each year if the estimated amounts of revenue are received.

The bill creates a total of 11 funds that will play a role in using the tobacco moneys for the various purposes authorized in law. Each of the funds created in SB 192 is described in separate sections below.

- **Tobacco Master Settlement Agreement Fund**

All MSA revenue received by Ohio will be deposited in this fund when it is first received. Once a year, after all payments for that fiscal year have been received, probably in May or June, the Director of Budget and Management will transfer the payments and interest in the Tobacco Master Settlement Agreement Fund to the funds shown on Tables 2 and 3 in accordance with section 183.02 of the Revised Code.

- **Tobacco Use Prevention and Cessation Trust Fund**
- **Tobacco Use Prevention Control and Endowment Fund**

The functions of these two funds are closely related. The Trust Fund will receive annually the percentage share of the moneys in the Tobacco Master Settlement Agreement Fund that is shown on Table 2. If the MSA revenue estimates hold up, the Tobacco Use Prevention and Cessation Trust Fund will receive $1.26 billion through FY 2012. This is shown on Table 3.

Moneys will be appropriated from the Trust Fund to the Department of Health, which will disburse them to the Endowment Fund. The appropriations made in Am. Sub. S.B. 192 from the Trust Fund are $234.9 million in FY 2001 and $135.0 million in FY 2002 (a total of $369.9 million).

The Endowment Fund is created in law as a custodial fund in the custody of the Treasurer of State. As with all other custodial funds, it is not considered to be in the state treasury and appropriations will not be made from it. The Endowment Fund will be used by one of the new entities – the Tobacco Cessation and Control Foundation – which will have the responsibility to reduce tobacco use in Ohio.

The Foundation will be able to control the investment of its assets under the same statutory limits placed on the investment practices of the state's employee retirement systems.

The Foundation will be governed by a 20-member Board of Trustees; 11 of these members are appointed by the Governor (12 including the Director of Health). The members are as follows:

- Eight members are to be health professionals, health researchers, or representatives of health organizations; two are to be appointed by the Governor, two by the Speaker, one by the House Minority Leader, two by the Senate President, and one by the Senate Minority Leader.
- Two members – one with financial planning and accounting experience and one with experience in media and mass marketing – are to be appointed by the Governor.
- One member appointed by the Governor from a list of at least three recommended by the American Cancer Society.
- One member appointed by the Governor from a list of at least three recommended by the American Heart Association.

- One member appointed by the Governor from a list of at least three recommended by the American Lung Association.
- One member appointed by the Governor from a list of at least three recommended by the Association of Hospitals and Health Systems.
- One member appointed by the Governor from a list of at least three recommended by the Ohio State Medical Association.
- One member appointed by the Governor from a list of at least three recommended by the Association of Ohio Health Commissioners.
- One member appointed by the Governor from a list of at least three recommended by the Ohio Dental Association.
- The Director of Health, the Executive Director of the Commission on Minority Health, and the Attorney General.

The Foundation is to prepare and update annually a 5-year plan to reduce tobacco use. It may carry out or provide funding for public and private agencies to carry out research and programs related to tobacco use prevention and cessation.

Annually by about October 1 (the law says within 90 days after the end of the fiscal year), the Foundation must submit to the Governor and General Assembly the following):

(A) A report of the activities of the Foundation during the preceding fiscal year and an independent and objective evaluation of the progress being made by the Foundation in reducing tobacco use by Ohioans;

(B) A financial report of the Foundation for the preceding fiscal year, which shall include both: (1) information on the amount and percentage of overhead and administrative expenditures compared to programmatic expenditures; and (2) an independent auditor's report on the general purpose financial statements of the Foundation. The financial statements shall be prepared in conformity with generally accepted accounting principles prescribed for governmental entities.

The first time these reports will be submitted is October 1, 2001 for the FY 2001 reporting period (July 1, 2000 through June 30, 2001).

The statutory language in SB 192 that establishes the Foundation will become effective in early-June. The appropriations in the bill become effective July 1, 2000. When a Board of Trustees and sufficient staff are in place the Foundation's priorities will probably be to prepare the Foundation's first 5-year plan and budgets for FYs 2001 and 2002 and develop and implement grant-making policies and processes.

- **Law Enforcement Improvements Trust Fund**

This Trust Fund will receive the combination of amounts and percentages shown on Table 2. If the revenue estimates hold up it will receive about $25 million through FY 2001, as shown on Table 3. The Trust Fund will be used to maintain, upgrade, and modernize the law enforcement training and laboratory facilities of the Office of the Attorney General. A $2.0 million capital appropriation is made in SB 192 for FYs 2001-2002.

- **Southern Ohio Agricultural and Community Development Trust Fund**
- **Southern Ohio Agricultural and Community Development Foundation Endowment Fund**

The functions of these two funds are closely related. The Trust Fund will receive the combination of amounts and percentages shown on Table 2 through FY 2011 and could receive as much as $229 million if the revenue estimates hold up. This is shown on Table 3.

Moneys will be appropriated from the Trust Fund to the Department of Agriculture, which will disburse them to the Endowment Fund. Appropriations made in SB 192 for FY 2001 are $22.2 million and for FY 2002 are $17.4 million (a total of $39.6 million).

The Endowment Fund is created in law as a custodial fund in the custody of the Treasurer of State. As with all other custodial funds, it is not considered to be in the state treasury and appropriations will not be made from it. The Endowment Fund will be used by one of the new entities – the Southern Ohio Agricultural and Community Development Foundation – which will have the responsibility to replace the production of tobacco in southern Ohio with the production of other agricultural products and to mitigate the adverse economic impact or reduced tobacco production in the region. The Foundation is to prepare a plan to accomplish this and shall make grants or loans to individuals, public agencies or privately owned companies to carry out the plan.

The Foundation will be able to invest its assets under the same statutory limits placed on the investment practices of the state's employee retirement systems.

The Foundation will be governed by a 12-member Board of Trustees; eight of the members are appointed by the Governor (10 including the Directors of Agriculture and Development). The members are as follows:

- The Director of Agriculture, the Director of Development, the Executive Director of the Ohio Rural Development Partnership, and the Director of the Ohio State University Extension.
- Two residents of major tobacco-producing counties appointed by the Governor with experience in local agricultural economic development or community development.
- Three active farmers from major tobacco-producing counties appointed by the Governor from a list of at least four individuals recommended by the

Ohio Farm Bureau and one of whom shall be appointed from a list of at least two individuals recommended by the Farmers Union.

- Three active farmers from major tobacco-producing counties appointed by the Governor from a list of at least six individuals recommended by the Ohio Tobacco Growers Association.

Annually by about October 1 (the law says within 90 days after the end of the fiscal year), the Foundation must submit to the Governor and General Assembly the following:

(A) A report of the activities of the Foundation during the preceding fiscal year and an independent evaluation of the progress being made by the Foundation in carrying out its duties;

(B) A financial report of the Foundation for the preceding fiscal year, which shall include both: (1) information on the amount and percentage of overhead and administrative expenditures compared to programmatic expenditures; and (2) an independent auditor's report on the general purpose financial statements of the Foundation. The financial statements shall be prepared in conformity with generally accepted accounting principles prescribed for governmental entities.

The first time these reports will be submitted is October 1, 2001 for the FY 2001 reporting period (July 1, 2000 through June 30, 2001).

The statutory language in SB 192 that establishes the Foundation will become effective in early-June. The appropriations in the bill become effective July 1, 2000. When a Board of Trustees and sufficient staff are in place the Foundation's priorities will probably be to prepare the Foundation's plan for accomplishing its goals and budgets for FYs 2001 and 2002 and develop and implement grant and loan-making policies and processes.

- **Ohio's Health Priorities Trust Fund**

This Trust Fund will receive the percentages shown on Table 2 and could receive as much as $252.9 million as shown on Table 3. $24.4 million are appropriated from this Trust Fund to the Department of Health in SB 192 – $10.0 million in FY 2001 and $14.4 million in FY 2002.

Moneys will be appropriated from the Trust Fund to the Department of Health. The Controlling Board, in accordance with a plan prepared by OBM and approved by the Board, will transfer these appropriations from the Department of Health to the state agencies responsible for carrying out the approved plan. OBM and the affected agencies will work on this plan over the next several months.

The Trust Fund is to be used for the following purposes:

1. Minority health programs, on which not less than 25% of the annual appropriations from the Trust Fund are to be expended.

2. Enforcing Ohio underage tobacco use laws (Section 2927.02 ORC).
3. Alcohol and drug abuse prevention programs, including programs for adult and juvenile offenders in state institutions, including aftercare programs.
4. A non-entitlement program funded through the Department of Health to provide emergency assistance including medication, oxygen or both to low-income seniors whose health has been adversely affected by tobacco use, on which 5% of the annual appropriations from the Trust Fund are to be expended.
5. Partial reimbursement, on a county basis, of hospitals, free medical clinics, and similar organizations or programs that provide free, uncompensated care to the general public, and of counties that pay private entities to provide such care using revenue from a property tax levied at least in part for that purpose.

- **Biomedical Research and Technology Transfer Trust Fund**

This Trust Fund will receive the percentages shown on Table 2 and could receive as much as $493.5 million as shown on Table 3. $35.1 million are appropriated from this Trust Fund to the Board of Regents in SB 192 – $5.0 million in FY 2001 and $30.1 million in FY 2002.

Moneys will be appropriated from the Trust Fund to the Biomedical Research and Technology Transfer Commission within the Ohio Board of Regents. The Commission shall consist of 25 members, 14 appointed by the Governor (17 including the Directors of Development, Health, and Budget and Management), as follows:

- The Chancellor of the Board, Director of Development, Director of Health, Executive Director of the Commission on Minority Health.
- The Director of Budget and Management, or the Director's designee.
- 12 members who shall neither be nor represent potential recipients of grants from the commission, appointed as follows:
  - Six members appointed by the Governor, at least two of whom are experts in commercializing the results of biomedical research.
  - Two members appointed by the Speaker.
  - One member appointed by the Minority Leader of the House.
  - Two members appointed by the President of the Senate.
  - One member appointed by the Minority Leader of the Senate.
- Eight nonvoting members appointed by the Governor representing Ohio's biomedical research institutions.

Annually by about October 1 (the law says within 90 days after the end of the fiscal year), the Commission must submit a report on its activities in the preceding fiscal year to the Governor and General Assembly. The first time this report will be submitted is October 1, 2001 for the FY 2001 reporting period (July 1, 2000 through June 30, 2001).

The statutory language in SB 192 that establishes the Commission will become effective in early-June. The appropriations in the bill become effective July 1, 2000. When the Commission and sufficient staff are in place the Commission's priorities will probably be to prepare budgets for FY 2001 and 2002, make a strategic assessment of the types of state investments in biomedical research and biotechnology that would improve the health of Ohioans and create jobs and business opportunities, and develop and implement grant-making policies and processes.

- **Education Facilities Trust Fund**
- **Education Facilities Endowment Fund**

The functions of these two funds are closely related. The Trust Fund will receive the amounts shown on both Table 2 and Table 3 – $2.4 billion through FY 2012.

Appropriations will be made from this Trust Fund to the School Facilities Commission for the construction, renovation, and repair of Ohio's primary and secondary schools. In SB 192 $462.8 million is appropriated for FYs 2001-2002 for this purpose. This is the amount in the Governor Taft's 12-year school facilities plan that is to be provided in these years from tobacco settlement payments. The $462.8 million is the sum of the transfers to this Trust Fund from the payments received in FYs 2000, 2001, and 2002 ($447.8 m.), plus anticipated investment earnings (which should be at least $15 m.).

The Endowment Fund will receive $5.0 million annually through FY 2012. From FYs 2013 through 2025, it will receive the percentages shown on Table 2, which, if the revenue estimates hold up, will be the amounts shown on Table 3. The total through FY 2025 could be as much as $2.1 billion. The Endowment Fund is to be maintained as a permanent source of revenue for constructing, renovating, and repairing Ohio's primary and secondary schools. All investment earnings from the Endowment Fund are to be transferred quarterly to the Education Facilities Trust Fund.

- **Education Technology Trust Fund**

This Trust Fund will receive the percentages shown on Table 2 and could receive as much as $218.7 million as shown on Table 3. The Trust Fund is to be used for new and innovative technology for primary and secondary education, including chartered nonpublic schools, and higher education, including both state institutions and private nonprofit institutions of higher education.

There are appropriations from this Trust Fund to the Controlling Board in SB 192 – $13.8 million in FY 2001 and $12.9 million in FY 2002 (a total of $26.7 million). The appropriations will be transferred (probably to the Board of Regents and the SchoolNet Commission) based on a plan prepared by OBM and approved by the

Controlling Board. OBM and the affected agencies will work on this plan over the next several months.

Questions and Answers about Am. Sub. S.B. 192

When does the bill become effective?

The appropriations become effective July 1, 2000 or 90 days after the bill is signed and filed with the Secretary of State, whichever is later. The non-appropriations sections of the bill become effective 90 days after the bill is signed and filed with the Secretary of State.

Are there appropriations in the bill?

Yes, $960.5 million. Some are operating appropriations and some are capital. These are shown below.

Appropriations in SB 192 - Tobacco Revenue Budget Bill

Operating Appropriations

Agencies	FY 2001	FY 2002	Purpose
Agriculture	$ 22,189,403	$ 17,445,115	Agriculture and community development
Controlling Board	$ 13,758,794	$ 12,911,963	Education technology
Health	$ 234,861,033	$ 135,006,283	Tobacco use prevention and control
Health	$ 10,004,715	$ 14,351,400	Ohio's public health priorities
Board Regents	$ 5,011,604	$ 30,142,237	Biomedical research and technology transfer
Total	$ 285,825,549	$ 209,856,998	

Capital Appropriations

Agencies	FYs 2001-2002	
Attorney General	$ 2,000,000	Law enforcement improvements
School Facilities Commission	$ 462,805,714	School facilities
Total	$ 464,805,714	
Grand Total in SB 192	$ 960,488,261	

What is the estimated MSA revenue for Ohio?

Refer to Table 1.

What happens if the MSA revenue Ohio actually receives is <u>less</u> than what has been estimated?

If this happens, and it is likely that it will, funding for school facilities through FY 2012 will not be affected. This is because the dollar amounts going to facilities are specified in the bill. Since funding for everything else is based on percentages of what remains, as shown on Table 2, a reduction in MSA revenue will result in proportionate decreases in the funding for all funds except the two that are for school facilities.

What happens if the MSA revenue Ohio actually receives is <u>more</u> than what has been estimated?
MSA payments in excess of what has been estimated for each fiscal year will go to the state's Income Tax Reduction Fund.

How much has Ohio received so far?
Two of the three payments expected in FY 2000 have been received. $124,377,649.28 was received 12/15/99. This was about $3.5 million more than expected because the payment had been held in escrow for a few months and earned interest. $108,338,700.76 was received 12/29/99. This was less than expected and has been attributed to reductions in consumption.

When the MSA payments are received, what will happen to them and when?
The revenue from the first two payments (about $232.7 million) is currently in Fund 087, the Tobacco Master Settlement Agreement Fund. The third FY 2000 payment (expected to be in the $190 million to $215 million range) is expected no later than May 1, 2000. After it is received and after S.B. 192 becomes effective (probably sometime in June), the Director of Budget and Management will transfer the payments and interest in the Tobacco Master Settlement Agreement Fund in accordance with the provisions of section 183.02 of the Revised Code, which are shown on Table 2.

In FYs 2001, 2002 and 2003 it is expected that Ohio's annual payments will be received in two parts – part in January and part by May 1. In subsequent fiscal years, one annual payment is expected no later than May 1. In each fiscal year the timing for distributing the payments should be as follows: after the last payment for the fiscal year is received and before July 1 the Director of Budget and Management will transfer the payments and interest in Fund 087 in the manner specified in section 183.02 of the Revised Code (refer to Table 2).

The amounts transferred to a Trust Fund in one fiscal year will be available to be appropriated by the General Assembly from that Trust Fund in the following fiscal year.

What happens with any investment earnings?
With one exception, investment earnings attributed to the funds created in S.B. 192 are credited to and retained in those funds and they can be appropriated, if necessary, and used in the same way that any other revenues in that fund can be used. The exception is the Education Facilities Endowment Fund. Its investment earnings are transferred quarterly to the Education Facilities Trust Fund.

How can Ohio's plan for using the MSA payments be changed?
The Governor could propose and General Assembly could consider legislation at any time to change any part of the plan. Am. Sub. S.B. 192 requires that in January, every six years beginning in 2012, a six-member legislative committee be formed to reconsider Ohio's plan for using the MSA payments. The committee is to report its recommendations to the General Assembly within nine months of its formation.

In the future, will the tobacco money be part of the regular operating budget?
Not unless the provisions of Am. Sub. S.B. 192 are changed. Under SB 192, the state's tobacco revenue budget will stand on its own and it will not be prepared as part of the regular operating budget. It will be prepared at about the same time the capital budget is normally prepared. The first tobacco revenue budget prepared under this new law will be submitted by Governor Taft to the General Assembly in late-January 2002 and it will be for FYs 2003 and 2004.

When are the members of the two foundations and the commission to be appointed?
They are to be appointed within 90 days of the effective date of sections 13, 14 and 15 of the bill. Those sections become effective 90 days after the bill signed by Governor Taft is filed with the Secretary of State; therefore, the appointments are to be made between three and six months after the bill is signed and filed.

What is the Tobacco Oversight Accountability Panel?
This seven-member panel is created in the bill to develop achievement benchmarks for each of the trust funds. It consists of the OBM Director, or the Director's designee, and three members each from the House and Senate.

Table 1
Estimated Tobacco Settlement Revenue for Ohio

Pmt #	Fiscal Year Received	Estimated MSA Base Payments	Est. Payments from the Strategic Contribution Fund	Total Estimated Payments
1	FY 2000	120,900,234.58		120,900,234.58
2/3	FY 2000	322,992,532.93		322,992,532.93
4/5	FY 2001	348,780,049.22		348,780,049.22
6/7	FY 2002	418,783,038.09		418,783,038.09
8/9	FY 2003	422,746,366.61		422,746,366.61
10	FY 2004	352,827,184.57		352,827,184.57
11	FY 2005	352,827,184.57		352,827,184.57
12	FY 2006	352,827,184.57		352,827,184.57
13	FY 2007	352,827,184.57		352,827,184.57
14	FY 2008	359,829,323.15	23,950,000.00	383,779,323.15
15	FY 2009	359,829,323.15	23,950,000.00	383,779,323.15
16	FY 2010	359,829,323.15	23,950,000.00	383,779,323.15
17	FY 2011	359,829,323.15	23,950,000.00	383,779,323.15
18	FY 2012	359,829,323.15	23,950,000.00	383,779,323.15
19	FY 2013	359,829,323.15	23,950,000.00	383,779,323.15
20	FY 2014	359,829,323.15	23,950,000.00	383,779,323.15
21	FY 2015	359,829,323.15	23,950,000.00	383,779,323.15
22	FY 2016	359,829,323.15	23,950,000.00	383,779,323.15
23	FY 2017	359,829,323.15	23,950,000.00	383,779,323.15
24	FY 2018	403,202,282.16		403,202,282.16
25	FY 2019	403,202,282.16		403,202,282.16
26	FY 2020	403,202,282.16		403,202,282.16
27	FY 2021	403,202,282.16		403,202,282.16
28	FY 2022	403,202,282.16		403,202,282.16
29	FY 2023	403,202,282.16		403,202,282.16
30	FY 2024	403,202,282.16		403,202,282.16
31	FY 2025	403,202,282.16		403,202,282.16
Total		9,869,422,448.49	239,500,000.00	10,108,922,448.49

Table 2
The Percentage and Dollar Allocation Plan for Ohio's Tobacco Settlement Payments in Am. Sub. S.B. 192

Pmt #	Fiscal Year Received	[1] Tobacco Use Prevention and Cessation Trust Fund	[2] Ohio's Public Health Priorities Trust Fund	[3] Biomedical Research and Technology Transfer Trust Fund	[4] Education Facilities Trust Fund	[5] Education Facilities Endowment Fund	[6] Education Technologies Trust Fund	[7] Law Enforcement Improvements Trust Fund	[8] Southern Ohio Agricultural and Community Development Trust Fund
1	FY 2000	104,855,222.85						10,000,000.00	5% of 1st pmt
2/3	FY 2000	70.30%	5.41%	2.71%	133,062,504.95	5,000,000.00	7.44%	5.41%	8.73%
4/5	FY 2001	62.84%	6.68%	14.03%	128,938,732.73	5,000,000.00	6.01%	2.32%	8.12%
6/7	FY 2002	61.41%	6.79%	13.29%	185,804,475.78	5,000,000.00	9.33%		9.18%
8/9	FY 2003	63.24%	6.90%	12.73%	180,561,673.11	5,000,000.00	8.22%		8.91%
10	FY 2004	66.65%	7.82%	13.78%	122,778,219.49	5,000,000.00	3.91%		7.84%
11	FY 2005	66.24%	8.18%	14.31%	121,389,325.80	5,000,000.00	3.48%		7.79%
12	FY 2006	65.97%	8.56%	14.66%	120,463,396.67	5,000,000.00	3.05%		7.76%
13	FY 2007		19.83%	49.57%	246,389,369.01	5,000,000.00	13.21%		17.39%
14	FY 2008		19.66%	45.06%	267,531,291.85	5,000,000.00	18.03%		17.25%
15	FY 2009		20.48%	45.06%	267,531,291.85	5,000,000.00	17.21%		17.25%
16	FY 2010		21.30%	45.06%	267,531,291.85	5,000,000.00	16.39%		17.25%
17	FY 2011		22.12%	45.06%	267,531,291.85	5,000,000.00	15.57%		17.25%
18	FY 2012	56.01%	10.47%	18.77%	110,954,544.28	5,000,000.00	14.75%		
19	FY 2013					30.22%			
20	FY 2014					33.36%			
21	FY 2015					40.90%			
22	FY 2016					40.90%			
23	FY 2017					40.90%			
24	FY 2018					40.90%			
25	FY 2019					40.90%			
26	FY 2020					40.90%			
27	FY 2021					40.90%			
28	FY 2022					40.90%			
29	FY 2023					40.90%			
30	FY 2024					40.90%			
31	FY 2025					40.90%			

Table 3
The Use of Ohio's Tobacco Settlement Payments
Pursuant to Am. Sub. S.B. 192

		EST. REVENUE	THE ESTIMATED DISTRIBUTION OF OHIO'S MSA PAYMENTS TO 7 TRUST FUNDS AND 1 ENDOWMENT FUND							
			[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]
Pmt #	Fiscal Year Received	Estimated Payments	Tobacco Use Prevention and Cessation Trust Fund	Ohio's Public Health Priorities Trust Fund	Biomedical Research and Technology Transfer Trust Fund	Education Facilities Trust Fund	Education Facilities Endowment Fund	Education Technology Trust Fund	Law Enforcement Improvements Trust Fund	Southern Ohio Agricultural and Community Development Trust Fund
1	FY 2000	120,900,234.58	104,655,222.85						10,000,000.00	6,045,011.73
2/3	FY 2000	322,992,532.93	130,005,809.67	10,004,714.51	5,011,603.76	133,062,504.95	5,000,000.00	13,758,794.08	10,004,714.51	16,144,391.44
4/5	FY 2001	348,780,049.22	135,006,283.28	14,351,399.94	30,142,236.70	128,938,732.73	5,000,000.00	12,911,963.12	4,984,318.54	17,445,114.90
6/7	FY 2002	418,783,038.09	140,001,635.12	15,479,744.38	30,298,350.93	185,804,475.78	5,000,000.00	21,270,399.86		20,928,432.02
8/9	FY 2003	422,746,366.61	149,995,600.17	16,365,743.85	30,193,611.48	180,561,673.11	5,000,000.00	19,496,581.81		21,133,156.19
10	FY 2004	352,827,184.57	149,995,135.23	17,598,829.07	31,011,747.39	122,778,219.49	5,000,000.00	8,799,414.53		17,643,838.86
11	FY 2005	352,827,184.57	149,992,437.65	18,522,616.85	32,403,257.59	121,389,325.80	5,000,000.00	7,880,037.49		17,639,509.20
12	FY 2006	352,827,184.57	149,991,890.88	19,462,340.24	33,331,531.31	120,463,396.67	5,000,000.00	6,934,595.53		17,643,429.94
13	FY 2007	352,827,184.57		20,115,118.83	50,282,725.18	246,389,369.01	5,000,000.00	13,399,935.44		17,640,036.13
14	FY 2008	383,779,323.15		21,871,362.95	50,128,362.90	267,531,291.85	5,000,000.00	20,058,020.04		19,190,285.40
15	FY 2009	383,779,323.15		22,783,596.81	50,128,362.90	267,531,291.85	5,000,000.00	19,145,786.19		19,190,285.40
16	FY 2010	383,779,323.15		23,695,830.67	50,128,362.90	267,531,291.85	5,000,000.00	18,233,552.33		19,190,285.40
17	FY 2011	383,779,323.15		24,608,064.52	50,128,362.90	267,531,291.85	5,000,000.00	17,321,318.47		19,190,285.40
18	FY 2012	383,779,323.15	150,008,658.64	28,041,254.35	50,270,710.99	110,954,544.28	5,000,000.00	39,504,154.88		
19	FY 2013	383,779,323.15					115,978,111.46			
20	FY 2014	383,779,323.15					128,028,782.20			
21	FY 2015	383,779,323.15					156,965,743.17			
22	FY 2016	383,779,323.15					156,965,743.17			
23	FY 2017	383,779,323.15					156,965,743.17			
24	FY 2018	403,202,282.16					164,909,733.40			
25	FY 2019	403,202,282.16					164,909,733.40			
26	FY 2020	403,202,282.16					164,909,733.40			
27	FY 2021	403,202,282.16					164,909,733.40			
28	FY 2022	403,202,282.16					164,909,733.40			
29	FY 2023	403,202,282.16					164,909,733.40			
30	FY 2024	403,202,282.16					164,909,733.40			
31	FY 2025	403,202,282.16					164,909,733.40			
Total		10,108,922,448.49	1,259,852,673.49	252,900,616.98	493,459,226.94	2,420,467,409.21	2,099,181,990.39	218,714,553.77	24,989,033.06	229,024,062.01