

Chapter 62 of 2003

PART D3

Section 1. **The tobacco settlement financing corporation act** is enacted to read as follows:

Tobacco Settlement Financing Corporation Act

- Section 1. Short title.
2. The tobacco settlement financing corporation.
 3. Definitions.
 4. The sale agreement.
 5. Powers of the corporation.
 6. Bonds of the corporation.
 7. State not liable on bonds or any ancillary bond facility.
 8. Remedies of bondholders.
 9. Tax exemption and tax contract by the state.
 10. Agreement with state.
 11. Bonds as legal investments.
 12. Actions against the corporation.
 13. Assistance to the corporation.
 14. Preference for actions or proceedings against the corporation.
 15. Construction.
 16. Severability clause.

Section 1. Short title. This act shall be known and may be cited as the "tobacco settlement financing corporation act".

§ 2. The tobacco settlement financing corporation. There is hereby created and established a subsidiary of the authority to be known as the "tobacco settlement financing corporation" as a public benefit corporation, separate and apart from the state. The directors of the authority shall serve as the members of the corporation and shall receive no additional salary or other compensation, either direct or indirect, for serving as members of the corporation, other than reimbursement for actual and necessary expenses incurred in the performance of such person's duties. Any one or more members of the

board may participate in a meeting of such board by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting. The corporation may delegate to one or more of its members, or officers, agents and employees, such powers and duties as the members may deem proper. Except as otherwise expressly provided by this act, actions by the corporation and the members of its board, and exercise of the corporation's powers, shall be taken in the same manner and subject to the same requirements, as are set forth or imposed under chapter 902 of the laws of 1972, as amended, for such actions and performance by the authority and its directors. Notwithstanding the existence of common management, the corporation shall be treated as a separate legal entity with its separate corporate purpose as set forth in section six of this act; and, accordingly, the assets, liabilities and funds of the corporation shall be neither consolidated nor commingled with those of the authority. The corporation and its corporate existence shall continue until six months after all its liabilities have been met or otherwise discharged. Upon the termination of the existence of the corporation, all of its rights and property shall pass to and be vested in the state.

§ 3. Definitions. 1. "Ancillary bond facility" means any interest rate exchange or similar agreement or any bond insurance policy, letter of credit or other credit enhancement facility, liquidity facility, guaranteed investment or reinvestment agreement, or other similar agreement, arrangement or contract.

2. "Authority" means the state of New York municipal bond bank agency established in section 2433 of the public authorities law.

3. "Benefited party" means any person, firm or corporation that enters into an ancillary bond facility with the corporation according to the provisions of this act.

4. "Board" means the members of the corporation.

5. "Bonds" means any bonds, notes, certificates of participation and other evidence of indebtedness issued by the corporation pursuant to section six of this act.

6. "Code" means the United States Internal Revenue Code of 1986, as amended.

7. "Complementary legislation" means sections 480-b, paragraph (c) of subdivision 1 of section 481 and subdivision (a-1) of section 1846 of the tax law.

8. "Consent decree" means the consent decree and final judgment of the supreme court of the state of New York, county of New York, dated December 23, 1998, as the same has been and may be corrected, amended or modified, in the action entitled State of New York, et al. v. Philip Morris Incorporated, et al. (Index No. 400361/97).

9. "Contingent contractual obligation" means a contract under which the obligation of the state is a contingent contractual obligation as such term is used in section 67-a of the state finance law.

10. "Costs of issuance" means any item of expense directly or indirectly payable or reimbursable by the corporation and related to the authorization, sale, or issuance of bonds, including, but not limited to, underwriting fees and fees and expenses of professional consultants and fiduciaries.

11. "Director of the budget" means the director of the budget of the state of New York.

12. "Financing costs" means all costs of issuance, capitalized interest, capitalized operating expenses and debt service reserves, fees, cost of any ancillary bond facility, and any other fees, discounts, expenses and costs related to issuing, securing and marketing the bonds including, without limitation, any net original issue discount.

13. "Investment securities" means, subject to or, as otherwise provided in, the provisions of any contract with bondholders of the corporation, (i) general obligations of, or obligations guaranteed by, any state of the United States of America or political subdivision thereof, or the District of Columbia or any agency or instrumentality of any of them, receiving one of the three highest long-term unsecured debt rating categories available for such securities of at least one independent rating agency, or (ii) certificates of deposit, savings accounts, time deposits or other obligations or accounts of banks or trust companies in the state, secured, if the corporation shall so require, in such manner as the corporation may so determine, or (iii) otherwise, in the discretion of the corporation, obligations in which the comptroller is authorized to invest, pursuant to either section 98 or 98-a of the state finance law.

14. "Interest rate exchange or similar agreement" means a written contract entered into in connection with the issuance of bonds or with such bonds outstanding with a counterparty to provide for an exchange or swap of payments based upon fixed and/or variable interest rates, and shall be for exchanges in currency of the United States of America only.

15. "Master settlement agreement" means the master settlement agreement, dated November 23, 1998, among the attorneys general of 46 states, including the state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, American Samoa and the Territory of the Northern Mariana Islands, on the one hand, and certain tobacco manufacturers, on the other hand, and the subject of the consent decree.

16. "Member" means any director of the authority including each person that has been duly appointed to represent such director at meetings of the authority from which such director may be absent.

17. "Net proceeds" means the amount of proceeds remaining following each sale of bonds which are not required by the corporation to pay or provide for the financing costs.

18. "Operating expenses" means the reasonable or necessary operating expenses of the corporation, including, without limitation, administrative expenses of the corporation or authority, the cost of preparation of accounting and other reports, costs of maintenance of the ratings on the bonds, funding of any operating expense reserve fund, if any, insurance premiums, costs of any ancillary bond facilities, and costs of annual meetings or other required activities of the corporation, and fees and expenses incurred for professional consultants and fiduciaries.

19. "Other assets" means assets and/or revenues, constituting a portion of the state's share, other than the pledged tobacco revenues, that are purchased pursuant to the sale agreement and pledged by the corporation for the payment of bonds or an ancillary bond facility.

20. "Other participating jurisdictions" means the fifty-seven (57) counties of the state and the city of New York, which together with the state, are entitled to receive settlement payments under the consent decree.

21. "Outstanding", when used with respect to bonds, shall exclude bonds that shall have been paid in full at maturity, or shall have otherwise been refunded, redeemed, defeased or discharged, or that may be deemed not outstanding pursuant to agreements with the holders thereof.

22. "Participating manufacturer" means a tobacco product manufacturer that is or becomes a signatory to the master settlement agreement.

23. "Pledged tobacco revenues" means each such portion of the state's share constituting tobacco settlement payments sold to the corporation pursuant to section four of this act and pledged by the corporation for the payment of bonds or an ancillary bond facility.

24. "Qualifying statute" has the meaning given that term in the master settlement agreement, constituting article 13-G of the public health law

of the state.

25. "Residual interests" means the income of the corporation, and bond proceeds, if any, or reserves not previously paid to the state, that are in excess of the corporation's requirements to pay its operating expenses, debt service, sinking fund or other redemption requirements, reserve fund, and any other contractual obligations under any resolution or any ancillary bond facility or that may be incurred in connection with the issuance of the bonds.

26. "Sale agreement" means any agreement authorized pursuant to this section in which the state provides for the sale of all or a portion of the state's share to the corporation.

27. "State" means the state of New York.

28. "State representative" means the governor of the state acting through the director of the budget.

29. "State's share" means all tobacco settlement payments received by the state on and after January 1, 2004 and required to be made, pursuant to the terms of the master settlement agreement, by participating manufacturers to the state which have not otherwise been allocated to any other participating jurisdictions pursuant to the terms of the consent decree, and the state's rights to receive such tobacco settlement payments and other assets of the state and other payments received by the state on and after January 1, 2004 and the state's right to receive such payments, under any other agreement, contract, statute or other provision available for sale or authorized to be sold, and determined by the state representative to be included in the sale agreement.

30. "Tobacco settlement financing corporation" or "the corporation" means the corporation created by section two of this act.

§ 4. The sale agreement. * 1. The state representative, upon the

execution of a sale agreement on behalf of the state may sell to the corporation, and the corporation may purchase, for cash or other consideration and in one or more installments, all or a portion of the state's share. Any such agreement shall provide, among other matters, that the purchase price payable by the corporation to the state for such state's share or portion thereof shall consist of the net proceeds of the bonds issued to finance such purchase price and the residual interests, if any. Notwithstanding section 121 of the state finance law or any other law to the contrary, the residual interests shall be deposited into the Medicaid management information system (MMIS) statewide escrow fund within thirty days upon the availability of such residual interests to fund a portion of the cumulative non-federal share of expenses related to the state takeover of the local share of Medicaid growth pursuant to part F of chapter 56 of the laws of 2012. Such deposit shall be in an amount equal to (a) the amount of residual interests scheduled for deposit into the MMIS statewide escrow fund in the applicable year's enacted budget financial plan as updated or (b) the total amount of residual interests available if the total amount of such residual interests is less than the total amount of residual interests scheduled for deposit into the MMIS statewide escrow fund in the applicable year's enacted budget financial plan as updated. At the discretion of the state representative, any residual interests which exceed the amount scheduled for deposit into the MMIS statewide escrow fund in the applicable year's enacted budget financial plan as updated may either be deposited into the (i) MMIS statewide escrow fund to fund a portion, as determined by the state representative, of the cumulative non-Federal share of expenses related to the state takeover of the local share of Medicaid growth, pursuant to part F of chapter 56 of the laws of 2012, or (ii) the state general fund; provided, however that any residual interest derived from other assets shall be applied as directed by statute. Notwithstanding any other law to the contrary, the amount used from such deposit to fund a portion of the cumulative non-Federal share of expenses related to the State takeover of the local share of Medicaid growth shall be paid without appropriation. Any such sale shall be pursuant to one or more sale agreements which may contain such terms and conditions deemed necessary by the state representative to carry out and effectuate the purposes of this section, including covenants binding

the state in favor of the corporation and its assignees, including the owners of its bonds such as covenants with respect to the enforcement at the expense of the state of the payment provisions of the master settlement agreement, the diligent enforcement at the expense of the state of the qualifying statute, the application and use of the proceeds of the sale of the state's share to preserve the tax-exemption on the bonds, the interest on which is intended to be exempt from federal income tax, issued to finance the purchase thereof and otherwise as provided in this act. Notwithstanding the foregoing, neither the state representative nor the corporation shall be authorized to make any covenant, pledge, promise or agreement purporting to bind the state with respect to pledged tobacco revenues, except as otherwise specifically authorized by this act.

* NB Effective until March 31, 2027

* 1. The state representative, upon the execution of a sale agreement on behalf of the state may sell to the corporation, and the corporation may purchase, for cash or other consideration and in one or more installments, all or a portion of the state's share. Any such agreement shall provide, among other matters, that the purchase price payable by the corporation to the state for such state's share or portion thereof shall consist of the net proceeds of the bonds issued to finance such purchase price and the residual interests, if any. The residual interests shall be deposited into the tobacco settlement fund pursuant to section 92-x of the state finance law, unless otherwise directed by statute; provided, however that any residual interest derived from other assets shall be applied as directed by statute. Any such sale shall be pursuant to one or more sale agreements which may contain such terms and conditions deemed necessary by the state representative to carry out and effectuate the purposes of this section, including covenants binding the state in favor of the corporation and its assignees, including the owners of its bonds such as covenants with respect to the enforcement at the expense of the state of the payment provisions of the master settlement agreement, the diligent enforcement at the expense of the state of the qualifying statute, the application and use of the proceeds of the sale of the state's share to preserve the tax-exemption on the bonds, the interest on which is intended to be exempt from federal income tax, issued to finance the purchase thereof and otherwise as

provided in this act. Notwithstanding the foregoing, neither the state representative nor the corporation shall be authorized to make any covenant, pledge, promise or agreement purporting to bind the state with respect to pledged tobacco revenues, except as otherwise specifically authorized by this act.

* NB Effective March 31, 2027

2. Any sale of all or part of the state's share to the corporation shall be treated as a true sale and absolute transfer of the property so transferred and not as a pledge or other security interest for any borrowing. The characterization of such a sale as an absolute transfer by the participants shall not be negated or adversely affected by the fact that only a portion of the state's share is transferred, nor by the acquisition or retention by the state of a residual interest, nor by any characterization of the corporation or its obligations for purposes of accounting, taxation or securities regulation, nor by the pledge of any other funds or assets of the corporation to secure bonds, nor by any other factor whatsoever.

3. On and after the effective date of each sale of any portion (including all) of the state's share, the state shall have no right, title or interest in or to the portion of the state's share sold, and the portion of the state's share so sold shall be the property of the corporation and not of the state, and shall be owned, received, held and disbursed by the corporation and not the state treasury. Notwithstanding section 92-x of the state finance law, on the effective date of any such sale with respect to tobacco settlement payments, the state through the attorney general shall notify the independent auditor and the escrow agent under the master settlement agreement that such portion of the state's share has been sold to the corporation and irrevocably instruct such independent auditor and escrow agent that, subsequent to such date, such portion of the state's share is to be paid directly to the indenture trustee for the benefit of the owners of the bonds of the corporation which are secured by a pledge of such amounts, until such bonds are no longer outstanding pursuant to the resolution or related indenture under which such bonds are issued.

4. The net proceeds of the bonds and any earnings thereon shall never be pledged to, nor made available for, payment of the bonds or any interest or redemption price thereon or any other debt or obligation of the corporation. The net proceeds of the bonds shall be deposited in the general fund as directed by the state representative as specified in, or otherwise provided for by, the sale agreement, and shall be used by the state (either directly or by reimbursement of the general fund) for any of the following purposes: (i) for health care purposes in accordance with section 2807-v of the public health law, including but not limited to the treatment of smoking-related illnesses and for smoking cessation efforts, (ii) for any of its capital purposes or for any of its capital programs, (iii) for payment of debt service on any of its outstanding bonds or on any state supported bonds, notes or other obligations or in respect of debt service on any outstanding bonds, notes or other obligations of local governments, school districts or public benefit corporations for which state aid is applicable or required to be paid or for which there is a contract subject to state appropriation provided that such bonds, notes or other obligations funded capital projects or programs, (iv) for other grants to local governments, school districts or public benefit corporations, or (v) to provide a revenue resource for personal service expenses of the state and general state charges. With respect to any bonds of the corporation, the interest on which is intended to be exempt from federal income tax, the corporation and the state representative may provide restrictions on the use of net proceeds of the bonds and other amounts in the sale agreement or otherwise in a tax regulatory agreement only as necessary to assure such exempt status.

5. The director of the budget shall notify in writing the chairs of the senate finance committee and the assembly ways and means committee of any plans to sell all or a portion of the state's share of tobacco settlement payments prior to entering any sale agreement with the corporation. At the time this notification is given, the chief executive officer of the corporation and the director of the budget shall provide a report to the chairs of the senate finance committee and the assembly ways and means committee on a planned bond sale of the corporation and such report shall include, but not be limited to: (A) the maximum amount of bonds expected to be sold by the corporation in connection with a

sale agreement; (B) the expected maximum interest rate and maturity date of such bonds; (C) the expected amount of the bonds that will be fixed and/or variable interest rate; (D) the estimated costs of issuance; (E) the estimated level or levels of reserve fund or funds, if any; (F) the estimated cost of bond insurance, if any; (G) the anticipated use or uses of the proceeds; and (H) the maximum expected net proceeds that will be paid to the state as a result of the issuance of such bonds. Any such expectations and estimates in the report shall not be deemed a substantive limitation on the authority of the corporation contained in this act.

§ 5. Powers of the corporation. The corporation also shall have the power to:

1. sue and be sued;
2. have a seal and alter the same at pleasure;
3. make and alter by-laws for its organization and internal management and make rules and regulations governing the use of its property and facilities;
4. make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this section and to commence any action to protect or enforce any right conferred upon it by any law, contract or other agreement;
5. appoint officers, agents and employees, prescribe their duties and qualifications, fix their compensation and engage the services of private consultants and counsel on a contract basis for rendering professional and technical assistance and advice provided that the chief executive officer of the corporation shall be the chief executive officer of the authority and any other officers or employees, if appointed, shall be those having similar positions with the authority, provided, however, that no such officer or employee shall receive any additional compensation as a result of such appointment;

6. pay its operating expenses and its financing costs;

7. borrow money in its name and issue negotiable bonds and provide for the rights of the holders thereof;

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

9. invest any funds or other moneys under its custody and control in investment securities or under any ancillary bond facility;

10. as security for the payment of the principal of and interest on any bonds issued by it pursuant to this act and any agreement made in connection therewith and for its obligations under any ancillary bond facility, pledge all or any part of its revenues or assets;

11. with the approval of the state representative, enter into, modify, amend, replace or renew any ancillary bond facility with any person under such terms and conditions as the corporation may determine including, without limitation, provisions as to default or early termination and indemnification by the corporation or any other party thereto for loss of benefits as a result thereof and with respect to execution of any interest rate exchange or similar agreement and prior thereto, adopt guidelines and make the determinations set forth in subdivision seven or eight of section six of this act; and

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

§ 6. Bonds of the corporation. 1. (i) The corporation shall have power and is hereby authorized from time to time to issue its bonds in an aggregate principal amount not exceeding four billion, two hundred million dollars (\$4,200,000,000) plus the amount of any financing costs,

to provide sufficient funds for achieving its corporate purpose, consisting of the purchase of all or a portion of the state's share pursuant to section four of this act and the payment or provision for financing costs. The foregoing limitation shall not apply to bonds issued to refund bonds. Provided, however, that no bonds may be issued pursuant to the authority and power granted by this section, except an issue of bonds in an amount not to exceed seven hundred million dollars (\$700,000,000) plus the amount of any applicable financing costs, until the state comptroller shall determine that legislative passage of the budget has occurred for the current state fiscal year in accordance with the provisions of subdivision 3 of section 5 of the legislative law. Provided, further, no bonds, other than refunding bonds, shall be issued pursuant to such authority and power on or after July 1, 2004.

(ii) Each issuance of bonds shall be authorized by a resolution of the corporation, adopted by a majority of the members of the board then in office without further authorization or approval, provided, however, that any such resolution authorizing the issuance of bonds may delegate to an officer of the corporation the power to issue such bonds from time to time and to fix the details of any such issues of bonds by an appropriate certificate of such authorized officer. Every issue of the bonds of the corporation shall be special revenue obligations payable from and secured by a pledge of pledged tobacco revenues and other assets, including those proceeds of such bonds deposited in a reserve fund for the benefit of bondholders, earnings on funds of the corporation and such other funds and assets as may become available, upon such terms and conditions as approved by the state representative and as specified by the corporation in the resolution under which the bonds are issued or in a related trust indenture.

(iii) The corporation shall have the power and is hereby authorized from time to time to issue bonds, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its other corporate purposes. The refunding bonds may be exchanged for the bonds to be refunded or sold and the proceeds applied to the purchase, redemption or payment of such bonds.

2. The bonds of the corporation of each issue shall be dated, shall bear interest (which, under the code, in the opinion of transaction counsel to the corporation, may be includable in or excludable from the gross income of the owners for federal income tax purposes) at such fixed or variable rates, payable at or prior to maturity, and shall mature at such time or times, as may be determined by the corporation and may be made redeemable before maturity, at the option of the corporation, at such price or prices and under such terms and conditions as may be fixed by the corporation. The principal and interest of such bonds may be made payable in any lawful medium. The resolution or the certificate of the authorized officer shall determine the form of the bonds, either registered or book-entry form, and the manner of execution of the bonds and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or outside the state. If any officer whose signature or a facsimile thereof appears on any bonds shall cease to be such officer before the delivery of such bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The corporation may also provide for temporary bonds and for the replacement of any bond that shall become mutilated or shall be destroyed or lost.

3. The corporation with the approval of the state representative may sell such bonds in such manner, either at a public or private sale and either on a competitive or negotiated basis. Provided, however, no such bonds may be sold by the corporation at private sale unless such sale and the terms thereof have been approved in writing by the comptroller. The proceeds of such bonds shall be disbursed for the purposes for which such bonds were issued under such restrictions as the sale agreement and the resolution authorizing the issuance of such bonds or the related trust indenture may provide. Such bonds shall be issued upon approval of both the state representative and the corporation and without any other approvals, filings, proceedings or the happening of any other conditions or things other than the approvals, findings, proceedings, conditions, and things that are specified and required by this act.

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

5. Whether or not the bonds of the corporation are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, the bonds are hereby made negotiable instruments for all purposes, subject only to the provisions of the bonds for registration.

6. At the sole discretion of the corporation, any bonds issued by the corporation and any ancillary bond facility made under the provisions of this act may be secured by a resolution or trust indenture by and between the corporation and the trust indenture trustee, which may be any trust company or bank having the powers of a trust company, whether located within or outside the state. Such trust indenture or resolution providing for the issuance of such bonds may provide for the creation and maintenance of such reserves as the board shall determine to be proper and may include covenants setting forth the duties of the corporation in relation to the bonds, the income of the corporation, the related sale agreement with respect to the sale of the state's share and the pledged tobacco revenues and other assets. Such trust indenture or resolution may contain provisions respecting the custody, safeguarding and application of all moneys and securities, may contain such provisions for protecting and enforcing the rights and remedies

(pursuant thereto and to the sale agreement) of the owners of the bonds and any other benefitted party as may be reasonable and proper and not in violation of law and may include any or all of the rights, powers and duties of the trustee appointed by bondholders pursuant to section eight of this act and limiting or abrogating the right of the bondholders to appoint a trustee under such section. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds or of any other funds or obligations received on behalf of the corporation to furnish such indemnifying bonds or to pledge such securities as may be required by the corporation. Any such trust indenture or resolution may contain such other provisions as the corporation may deem reasonable and proper for priorities and subordination among the owners of the bonds and other beneficiaries. Any reference in this act to a resolution of the board shall include any trust indenture authorized thereby.

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

8. The corporation may enter into, amend or terminate, any ancillary bond facility that it determines to be necessary or appropriate to place the obligations or investments of the corporation, as represented by the bonds or the investment of reserved bond proceeds or other pledged tobacco revenues or other assets, in whole or in part, on the interest rate, cash flow or other basis approved by the corporation, which facility may include without limitation contracts commonly known as interest rate swap agreements, forward purchase contracts or guaranteed investment contracts and futures or contracts providing for payments

based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the corporation in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds of the corporation or (ii) investment, or contract providing for investment of reserves or similar facility guaranteeing an investment rate for a period of years not to exceed the underlying term of the bonds. The determination by the corporation that an ancillary bond facility or the amendment or termination thereof is necessary or appropriate as aforesaid shall be conclusive. Any ancillary bond facility may contain such payment, security, default, remedy, termination provisions and payments and other terms and conditions as determined by the corporation, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate.

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

10. The corporation, subject to such agreements with bondholders as may then exist (including provisions which restrict the power of the corporation to purchase bonds), or with the providers of any applicable ancillary bond facility, shall have the power out of any funds available therefor to purchase bonds of the corporation, which may or may not thereupon be cancelled, at a price not substantially exceeding:

(i) if the bonds are then redeemable, the redemption price then applicable, including any accrued interest; and

(ii) if the bonds are not then redeemable, the redemption price and accrued interest applicable on the first date after such purchase upon which the bonds become subject to redemption.

11. (i) Notwithstanding the provisions of any general or special law to the contrary, and subject to the making of annual appropriations therefor by the state, in order to assist in the undertaking and financing by the corporation under this act, the state representative is

authorized to and shall enter into one or more contingency contracts with the corporation upon such terms as the corporation and the state representative shall agree, so as to provide annually to the corporation the amount, if any, as necessary to meet the debt service requirements on one or more series of bonds, including refunding bonds, in any year if the receipts from pledged tobacco revenues or from an ancillary bond facility, if any, are inadequate and after application of all collateral pledged therefor, including any debt service and debt service reserve fund. Any contingency contract shall terminate when there are no bonds benefited by the contract outstanding in accordance with the trust indenture under which such bonds are issued. The contract may provide for (A) the corporation to request annually, not later than sixty days prior to the commencement of the state's next succeeding fiscal year, from the state the amount, as shall be certified by an authorized officer of the corporation to the director of the budget, to be provided by the state during its next succeeding fiscal year pursuant to each contingency contract, and (B) for the director of the budget on behalf of the state to include, as a requested appropriation item, an amount equal to such certified amount. Each contingency contract shall include text to the effect that the obligations of the state thereunder shall be deemed executory only to the extent of the moneys available to the state and no liability on account of any such agreement shall be incurred by the state beyond the moneys available and appropriated for the purpose thereof.

(ii) The state, through the state representative, is hereby authorized to enter into a contingency contract on the terms and conditions and subject to the limitations of this section, it being hereby determined that the additional net proceeds to be received as a result thereof by the state are an important public purpose to be achieved. The obligation of the state to fund or to pay the amounts provided for in the contingency contract, as in this section provided, shall constitute a contingent contractual obligation and shall not constitute a debt or state supported debt of the state within the meaning of any constitutional or statutory provision and shall be deemed executory only to the extent of moneys available; no liability shall be incurred by the state beyond the moneys available for such purpose and such obligation is subject to annual appropriation by the legislature. The amounts paid

to the corporation pursuant to any such contract shall be used by it solely to pay or provide for the payment of debt service on the bonds of the corporation, including refunding bonds, if any.

12. Neither the members of the corporation nor any other person executing the bonds or an ancillary bond facility of the corporation shall be subject to any personal liability or accountability by reason of the issuance or execution and delivery thereof.

§ 7. State not liable on bonds or any ancillary bond facility. Neither any bond nor any ancillary bond facility of the corporation shall constitute a debt or moral obligation of the state or a state supported obligation within the meaning of any constitutional or statutory provision or a pledge of the faith and credit of the state or of the taxing power of the state, and the state shall not be liable to make any payments thereon nor shall any bond or any ancillary bond facility be payable out of any funds or assets other than pledged tobacco revenues and other assets, if any, sold to the corporation and other funds and assets of or available to the corporation pledged therefor, and the bonds and any ancillary bond facility of the corporation shall contain on the face thereof or other prominent place thereon a statement to the foregoing effect.

§ 8. Remedies of bondholders. 1. Subject to the provisions of section six of this act, in the event that the corporation shall default in the payment of principal of, or interest on, or sinking fund payment on, any issue of bonds after the same shall become due, whether at maturity or upon call for redemption, or in the event that the corporation or the state shall default in any agreement made with the holders of any issue of bonds, the holders of twenty-five per centum in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county of Albany and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purposes herein provided.

2. Such trustee, or any trustee appointed under this act, may, and upon written request of the holders of twenty-five per centum in principal amount of such bonds then outstanding shall, in his or its own name:

(i) by suit, action or proceeding in accordance with the civil practice law and rules, enforce all rights of the bondholders, including the right to require the corporation to carry out any agreement with such holders and to perform its duties under this act;

(ii) bring suit upon such bonds;

(iii) by action or suit, require the corporation to account as if it were the trustee of an express trust for the holders of such bonds;

(iv) by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds; and

(v) declare all such bonds due and payable, and if all defaults shall be made good, then, with the consent of the holders of twenty-five per centum of the principal amount of such bonds then outstanding, annul such declaration and its consequences, provided, however, that nothing herein shall preclude the corporation from agreeing that consent of the provider of an ancillary bond facility is required for an acceleration of related bonds in the event of a default other than a failure to pay principal of or interest on the bonds when due.

3. The supreme court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of such bondholders. The venue of any such suit, action or proceeding shall be laid in the county of Albany.

4. Before declaring the principal of bonds due and payable, the trustee shall first give thirty days notice in writing to the corporation.

§ 9. Tax exemption and tax contract by the state. 1. It is hereby determined that the creation of the corporation and the carrying out of its corporate purposes are in all respects for the benefit of the people of the state of New York and are public purposes. Accordingly, the

corporation shall be regarded as performing an essential governmental function in the exercise of the powers conferred upon it by this act. The property of the corporation, its income and its operations shall be exempt from taxation, assessments, special assessments and ad valorem levies. The corporation shall not be required to pay any fees, taxes, special ad valorem levies or assessments of any kind, whether state or local, including, but not limited to, fees, taxes, special ad valorem levies or assessments on real property, franchise taxes, sales taxes or other taxes, upon or with respect to any property owned by it or under its jurisdiction, control or supervision, or upon the uses thereof, or upon or with respect to its activities or operations in furtherance of the powers conferred upon it by this act, or upon or with respect to any fares, tolls, rentals, rates, charges, fees, revenues or other income received by the corporation.

2. Any bonds issued pursuant to this act, their transfer and the income therefrom shall, at all times, be exempt from taxation.

3. The state hereby covenants with the purchasers and with all subsequent holders and transferees of bonds issued by the corporation pursuant to this act, in consideration of the acceptance of and payment for the bonds, that the bonds of the corporation issued pursuant to this act and the income therefrom and all revenues, moneys, and other property pledged to pay or to secure the payment of such bonds shall at all times be exempt from taxation.

4. In the case of any bonds of the corporation, interest on which is intended to be exempt from federal income tax, the corporation shall prescribe restrictions on the use of the proceeds thereof and related matters only as are necessary to assure such exemption, and the recipients of such proceeds shall be bound thereby to the extent such restrictions shall be made applicable to them. Any such recipient, including, but not limited to, the state, a public benefit corporation, a school district or municipality is authorized to execute a tax regulatory agreement with the corporation or the state, as the case may be, and the execution of such an agreement may be treated by the corporation or the state as a condition to receiving any such proceeds.

§ 10. Agreement with state. 1. The state pledges and agrees with the corporation, and the owners of the bonds of the corporation in which the corporation has included such pledge and agreement, that the state shall (i) irrevocably direct, through the attorney general, the independent auditor and the escrow agent under the master settlement agreement to transfer all pledged tobacco revenues directly to the corporation or its assignee, (ii) enforce its right to collect all moneys due from the participating manufacturers under the master settlement agreement and, in addition, shall diligently enforce the qualifying statute as contemplated in section IX(d)(2)(B) of the master settlement agreement against all tobacco product manufacturers selling tobacco products in the state and that are not in compliance with the qualifying statute, in each case in the manner and to the extent deemed necessary in the judgment of the attorney general, provided, however, that the sale agreement may provide (a) that the remedies available to the corporation and the bondholders for any breach of the pledges and agreements of the state set forth in this clause shall be limited to injunctive relief, and (b) that the state shall be deemed to have diligently enforced the qualifying statute so long as there has been no judicial determination by a court of competent jurisdiction in this state, in an action commenced by a participating tobacco manufacturer under the master settlement agreement, that the state has failed to diligently enforce the qualifying statute for the purposes of section IX(d)(2)(B) of the master settlement agreement, (iii) neither amend the master settlement agreement nor the consent decree or take any other action in any way that would materially adversely (a) alter, limit or impair the corporation's right to receive pledged tobacco revenues, or (b) limit or alter the rights hereby vested in the corporation to fulfill the terms of its agreements with such bondowners, or (c) in any way impair the rights and remedies of such bondowners or the security for such bonds until such bonds, together with the interest thereon and all costs and expenses in connection with any action or proceedings by or on behalf of such bondowners, are fully paid and discharged (provided, that nothing herein shall be construed to preclude the state's regulation of smoking and taxation and regulation of the sale of cigarettes or the like or to

restrict the right of the state to amend, modify, repeal or otherwise alter statutes imposing or relating to the taxes), and (iv) not amend, supersede or repeal the qualifying statute and the complementary legislation, in any way that would materially adversely affect the amount of any payment to, or materially adversely affect the rights of, the corporation or such bondholders. The state representative is authorized and directed to include this pledge and agreement in the sale agreement and authorizes and directs the corporation, as agent of the state to include this pledge and agreement in any contract with the bondholders of the corporation. Notwithstanding these pledges and agreements by the state, the attorney general may in his or her discretion enforce any and all provisions of the master settlement agreement, without limitation.

2. Prior to the date which is one year and one day after the corporation no longer has any bonds outstanding, the corporation shall have no authority to file a voluntary petition under chapter 9 of the federal bankruptcy code or such corresponding chapter or sections as may, from time to time, be in effect, and neither any public officer nor any organization, entity or other person shall authorize the corporation to be or become a debtor under chapter 9 or any successor or corresponding chapter or sections during such period. The state hereby covenants with the owners of the bonds of the corporation that the state will not limit or alter the denial of authority under this subdivision during the period referred to in the preceding sentence. The corporation is authorized and directed as agent of the state to include this covenant as an agreement of the state in any contract with the bondholders of the corporation.

3. To the extent deemed appropriate by the corporation and with the approval of the state representative, any pledge and agreement of the state with respect to the bonds as provided in this section may be extended to, and included in, any ancillary bond facility as a pledge and agreement of the state with the corporation and the benefited party.

4. The state acknowledges and agrees that the other participating jurisdictions have rights and interests in the consent decree. In

recognition of the rights of the other participating jurisdictions contained in the consent decree, the state pledges that the sale of the state's share authorized by this act shall in no way include or be deemed to include, and the state shall not otherwise alter, limit, or impair, the rights of the other participating jurisdictions including, but not limited to, rights to receive payments, set forth in the consent decree. Nothing in this act shall be construed to alter the right of each of the other participating jurisdictions under the consent decree to receive payments or to sell or assign some or all of its interest in the manner deemed appropriate pursuant to law by its governing body.

§ 11. Bonds as legal investments. The bonds of the corporation are hereby made securities in which all public officers and bodies of this state and all municipalities and political subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The bonds are also hereby made securities which may be deposited with and may be received by all public officers and bodies of the state and all municipalities, political subdivisions and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.

§ 12. Actions against the corporation. 1. An action against the corporation for death, personal injury or property damage or founded on tort shall not be commenced more than one year and ninety days after the cause of action thereof shall have accrued nor unless a notice of claim shall have been served on a member of the corporation or officer or employee thereof designated by the corporation for such purpose, within

the time limited by, and in compliance with the requirements of section 50-e of the general municipal law.

2. The venue of every action, suit or special proceeding brought against the corporation shall be laid in the county of Albany.

3. Neither any member of the corporation nor any officer, employee, or agent of the corporation, while acting within the scope of their authority, shall be subject to any personal liability resulting from exercising or carrying out of any of the corporation's purposes or powers.

§ 13. Assistance to the corporation. The corporation may use agents, employees and facilities of the authority and, with the consent of the governor, comptroller or attorney general as the case may be, the corporation may use agents, employees and facilities of the state, paying to the authority or the affected agency, office or department its agreed proportion of the compensation or costs.

§ 14. Preference for actions or proceedings against the corporation. Any action or proceeding to which the corporation or the people of the state may be parties, in which any question arises as to the validity of this act, shall be preferred over all other civil causes of action or cases, except election causes of action or cases, in all courts of the state and shall be heard and determined in preference to all other civil business pending therein, except election causes, irrespective of position on the calendar. The same preference shall be granted upon application of the corporation or its counsel in any action or proceeding questioning the validity of this act in which the corporation may be allowed to intervene. The venue of any such action or proceeding shall be laid in the supreme court of the county of Albany.

§ 15. Construction. This act and all powers granted hereby shall be liberally construed to effectuate its intent and their purposes, without

implied limitations thereon. This act shall constitute full and complete authority for all things herein contemplated to be done. All rights and powers herein granted shall be cumulative with those derived from other sources and shall not, except as expressly stated herein, be construed in limitation thereof. Insofar as the provisions of this act are inconsistent with the provisions of any other act, general or special, the provisions of this act shall be controlling.

§ 16. Severability clause. If any clause, sentence, paragraph, section or part of this act be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof but shall be applied in its operation to the clause, sentence, paragraph, section or part hereof directly involved in the controversy in which such judgment shall have been rendered.