

By: Representative Watson (By Request)

To: Appropriations; Ways and Means

HOUSE BILL NO. 1303

1 AN ACT TO AMEND SECTIONS 43-13-401, 43-13-403, 43-13-405,
 2 43-13-407 AND 43-13-409, MISSISSIPPI CODE OF 1972, TO CREATE A
 3 TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY, WHICH SHALL BE A
 4 PUBLIC CORPORATION TO RECEIVE ALL OF THE STATE'S FUTURE TOBACCO
 5 SETTLEMENT PAYMENTS AND TO ISSUE BONDS OF THE AUTHORITY PAYABLE
 6 FROM AND SECURED SOLELY BY THE STATE'S TOBACCO RECEIPTS; TO
 7 PROVIDE FOR THE TRANSFER OF THE PROCEEDS OF THE BONDS TO THE
 8 HEALTH CARE EXPENDABLE FUND; TO PROVIDE FOR THE TRANSFER OF THE
 9 UNEXPENDED BALANCE OF THE HEALTH CARE TRUST FUND TO THE HEALTH
 10 CARE EXPENDABLE FUND; TO PROVIDE FOR A BOARD OF DIRECTORS FOR THE
 11 AUTHORITY, WHICH SHALL BE THE SUCCESSOR TO THE BOARD OF DIRECTORS
 12 FOR THE HEALTH CARE TRUST FUND AND EXPENDABLE FUND; TO PROVIDE FOR
 13 THE ASSIGNMENT OF FUTURE TOBACCO SETTLEMENT PAYMENTS TO THE
 14 AUTHORITY; TO PRESCRIBE THE POWERS AND RESPONSIBILITIES OF THE
 15 AUTHORITY AND THE BOARD; TO PROVIDE FOR THE ISSUANCE OF THE BONDS;
 16 TO PROVIDE FOR THE MAINTENANCE OF ACCOUNTS AND THE ISSUANCE OF AN
 17 ANNUAL REPORT; TO PROVIDE FOR THE TAX EXEMPT STATUS OF INTEREST
 18 FROM THE BONDS; AND FOR RELATED PURPOSES.

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

20 **SECTION 1.** Section 43-13-401, Mississippi Code of 1972, is
 21 amended as follows:

22 43-13-401. It is declared by the Legislature that the funds
 23 received by the State of Mississippi from tobacco companies in
 24 settlement of a certain lawsuit brought against those companies by
 25 the State of Mississippi, or as a result of the settlement of any
 26 lawsuit brought against tobacco companies by another state, should
 27 be applied toward improving the health and health care of the
 28 citizens and residents of the state. It is the intent of the
 29 Legislature by this article to provide the manner and means
 30 necessary to carry out those purposes. The Legislature has
 31 considered the financing techniques employed and to be employed by
 32 other jurisdictions to convert future tobacco settlement payments
 33 receivable into current assets and thereby to reduce exposure to
 34 payment risks, and declares it to be prudent and in the best

35 interest of the State of Mississippi to employ those financing
36 techniques.

37 **SECTION 2.** Section 43-13-403, Mississippi Code of 1972, is
38 amended as follows:

39 43-13-403. When used in this article, the following
40 definitions shall apply, unless the context requires otherwise:

41 (a) "Authority" means the Tobacco Settlement Revenue
42 Management Authority established in Section 43-13-409.

43 (b) "Board" means the governing board of the Tobacco
44 Settlement Revenue Management Authority established in Section
45 43-13-409.

46 (c) "Bonds" means special source bonds, notes, or other
47 evidences of indebtedness of the authority payable solely from and
48 secured solely by the state's tobacco receipts, issued under the
49 authorizations contained in this article.

50 (d) "Health Care Trust Fund" means the trust fund
51 established by Section 43-13-405 for the deposit of the funds
52 received by the State of Mississippi as a result of the tobacco
53 settlement, including income from the investment of those funds.

54 (e) "Health Care Expendable Fund" means the fund
55 established by Section 43-13-407 for the annual transfer of
56 certain funds from the Health Care Trust Fund that are available
57 for appropriation by the Legislature.

58 (f) "Income" means all interest and dividends derived
59 from the investment of any tobacco settlement funds and any
60 capital gains from the sale or exchange of those investments.

61 (g) "Tobacco settlement" means the settlement of the
62 case of Mike Moore, Attorney General ex rel. State of Mississippi
63 v. The American Tobacco Company et al. (Chancery Court of Jackson
64 County, Mississippi, Cause No. 94-1429) and the settlement of any
65 case brought against tobacco companies by another state.

66 **SECTION 3.** Section 43-13-405, Mississippi Code of 1972, is
67 amended as follows:

68 43-13-405. * * * In accordance with the purposes of this
69 article, there is established in the State Treasury the Health
70 Care Trust Fund. On July 1, 2005, the entire unexpended balance
71 of the Health Care Trust Fund shall be transferred into the Health
72 Care Expendable Fund. * * *

73 * * *

74 **SECTION 4.** Section 43-13-407, Mississippi Code of 1972, is
75 amended as follows:

76 43-13-407. (1) In accordance with the purposes of this
77 article, there is established in the State Treasury the Health
78 Care Expendable Fund. * * *

79 * * *

80 * * * All income from the investment of the funds in the
81 Health Care Expendable Fund shall be credited to the account of
82 the Health Care Expendable Fund. Any funds in the Health Care
83 Expendable Fund at the end of a fiscal year shall not lapse into
84 the State General Fund.

85 (2) The funds in the Health Care Expendable Fund shall be
86 available for expenditure under specific appropriation by the
87 Legislature beginning in fiscal year 2000, and shall be expended
88 exclusively for health care purposes.

89 * * *

90 **SECTION 5.** Section 43-13-409, Mississippi Code of 1972, is
91 amended as follows:

92 43-13-409. (1) (a) There is created the Tobacco Settlement
93 Revenue Management Authority, a public body corporate and politic
94 and an instrumentality of this state, with the responsibility of
95 effecting the public purpose of this article.

96 (b) The purpose of the authority is to receive all of
97 the state's tobacco receipts, to issue bonds of the authority
98 payable solely from and secured solely by the state's tobacco
99 receipts or any tobacco receipts reserve fund created from it for
100 the purposes authorized in this article, and to manage and dispose

101 of the state's tobacco receipts for the purposes and in the manner
102 authorized in this article.

103 (c) Upon termination of the existence of the authority,
104 title to all property, real and personal, owned by it, including
105 net earnings, vests in the state.

106 (2) The authority shall be governed by a board of directors.
107 The Board of Directors for the Health Care Trust Fund and Health
108 Care Expendable Fund shall be the board of directors for the
109 authority, and members appointed before the effective date of this
110 act shall succeed to membership to the board of directors of the
111 authority. The board of directors shall consist of thirteen (13)
112 members as follows:

113 (a) Seven (7) voting members as follows: the State
114 Treasurer, or his designee, the Attorney General, or his designee,
115 and one (1) member from each congressional district to be
116 appointed by the Governor with the advice and consent of the
117 Senate. Of the members appointed by the Governor, one (1) member
118 shall be appointed for an initial term that expires on March 1,
119 2000; one (1) member shall be appointed for an initial term that
120 expires on March 1, 2001; one (1) member shall be appointed for an
121 initial term that expires on March 1, 2002; one (1) member shall
122 be appointed for an initial term that expires on March 1, 2003;
123 and one (1) member shall be appointed for an initial term that
124 expires on March 1, 2004. Upon the expiration of any of the
125 initial terms of office, the Governor shall appoint successors by
126 and with the advice and consent of the Senate for terms of five
127 (5) years from the expiration date of the previous term. Any
128 member appointed by the Governor shall be eligible for
129 reappointment. Each member appointed by the Governor shall
130 possess knowledge, skill and experience in business or financial
131 matters commensurate with the duties and responsibilities of the
132 board of directors in administering the Health Care Trust Fund and
133 the Health Care Expendable Fund.

134 (b) Two (2) nonvoting, advisory members of the Senate
135 shall be appointed by the Lieutenant Governor, and one (1)
136 nonvoting, advisory representative of the health care community
137 shall be appointed by the Lieutenant Governor, who shall serve for
138 the length of the term of the appointing official and shall be
139 eligible for reappointment.

140 (c) Two (2) nonvoting, advisory members of the House of
141 Representatives shall be appointed by the Speaker of the House,
142 and one (1) nonvoting, advisory representative of the health care
143 community shall be appointed by the Speaker of the House, who
144 shall serve for the length of the term of the appointing official
145 and shall be eligible for reappointment.

146 (d) Any person appointed to fill a vacancy on the board
147 of directors shall be appointed in the same manner as for a
148 regular appointment and shall serve for the remainder of the
149 unexpired term only.

150 (2) (a) Nonlegislative members of the board of directors
151 shall serve without compensation, but shall be reimbursed for each
152 day's official duties of the board at the same per diem as
153 established by Section 25-3-69, and actual travel and lodging
154 expenses as established by Section 25-3-41. Legislative members
155 of the board of directors shall receive the same per diem and
156 expense reimbursement as for attending committee meetings when the
157 Legislature is not in regular session.

158 (b) The State Treasurer shall be the chairman of the
159 board of directors. The board of directors shall annually elect
160 one (1) member to serve as vice chairman of the board. The vice
161 chairman shall act as chairman in the absence of or upon the
162 disability of the chairman or if there is a vacancy in the office
163 of chairman.

164 (c) All expenses of the board of directors in carrying
165 out its duties and responsibilities under this article, including
166 the payment of per diem and expenses of the nonlegislative members

167 of the board, shall be paid from funds appropriated to the State
168 Treasurer's office for that purpose.

169 (d) To the extent that administrative assistance is
170 needed for the functions and operations of the authority, the
171 board may obtain this assistance from the Office of the State
172 Treasurer, which must provide assistance requested by the board at
173 no cost to the board or to the authority other than for expenses
174 incurred and paid to entities that are not agencies or departments
175 of the state. The board must retain ultimate responsibility and
176 provide proper oversight for the implementation of this article.

177 (e) The board shall exercise the powers of the
178 authority. A majority of the members of the board constitutes a
179 quorum for the purpose of conducting all business. The board
180 shall determine the number of personnel it requires, their
181 compensation and duties.

182 * * *

183 (3) The state's tobacco settlement payments due to the state
184 after July 1, 2005, and the right to receive them as they are
185 distributed from escrow are assigned to the authority. On or
186 after the date these revenues are pledged, the state shall have no
187 right, title or interest in or to the state's tobacco receipts;
188 and the state's tobacco receipts are property of the authority and
189 not of the state, and must be owned, received, held and disbursed
190 by the authority or the trustee for the holders of bonds and not
191 by the state. The state directs the independent auditor and the
192 escrow agent to make all these payments to the authority in
193 accordance with instructions that may be given by the authority
194 from time to time. The assignment and direction made in this
195 subsection are irrevocable during any time when bonds are
196 outstanding under this article plus one (1) year and one (1) day
197 thereafter and are a part of the contractual obligation owed to
198 the bond holders. On or before the date of delivery of any bonds,
199 the state through the State Treasurer shall notify the independent

200 auditor and the escrow agent that the state's tobacco receipts
201 have been assigned to the authority and shall instruct the
202 independent auditor and the escrow agent that, after the delivery
203 date for bonds and irrevocably during the time when any bonds are
204 outstanding, the state's tobacco receipts are to be paid directly
205 to the authority, or its designee.

206 (4) In addition to the powers contained elsewhere in this
207 article, the board has all power necessary, useful or appropriate
208 to operate and administer the authority, to effectuate the
209 purposes of the authority, and to perform its other functions
210 including, but not limited to, the power to:

211 (a) Have perpetual succession;

212 (b) Sue and be sued in its own name;

213 (c) Adopt, promulgate, amend and repeal bylaws, not
214 inconsistent with provisions in this article for the
215 administration of the authority's affairs and the implementation
216 of its functions;

217 (d) Have a seal and alter it at its pleasure, although
218 the failure to affix the seal does not affect the validity of an
219 instrument executed on behalf of the authority;

220 (e) Enter into contracts, arrangements and agreements
221 with government units and other persons and execute and deliver
222 all financing agreements, including bonds issued to support the
223 borrowing by those government units to pay eligible costs of
224 qualified projects, and other instruments necessary or convenient
225 to the exercise of the powers granted in this article;

226 (f) Enter into agreements with a department, agency,
227 political subdivision or instrumentality of the United States or
228 of this state or of another state for the purpose of planning and
229 providing for the financing of qualified projects or for the
230 administration of the purposes and programs of this article;

231 (g) Enter into agreements with the tobacco trust fund
232 for the purpose of managing and controlling the transfer of funds

233 between the authority and the tobacco trust fund and governing the
234 investment and the monitoring and recordkeeping of these funds,
235 for purposes of maintaining the exemption from federal income tax
236 of interest on bonds and for other purposes;

237 (h) Enter into, amend and terminate agreements in the
238 nature of interest rate swaps, forward security supply contracts,
239 agreements for the management of interest rate risks, agreements
240 for the management of cash flow, and other agreements of a similar
241 nature, with respect to bonds issued pursuant to this article;

242 (i) Procure insurance, guarantees, letters of credit
243 and other forms of collateral or security or credit support from
244 any public or private entity, including any department, agency or
245 instrumentality of the United States or this state, for the
246 payment of any bonds, including the power to pay premiums or fees
247 on any insurance, guarantees, letters of credit and other forms of
248 collateral or security or credit support;

249 (j) Borrow money through the issuance of bonds as
250 provided in this article, and through the issuance of notes in
251 anticipation of the issuance of these bonds;

252 (k) Enter into contracts and expend funds to obtain
253 accounting, management, legal, financial consulting, trusteeship
254 and other professional services necessary or convenient to the
255 operations of the authority; however, all matters relating to the
256 designation and selection of bond counsel to the authority is
257 within the discretion of the State Treasurer;

258 (l) In order to pay for budgeted items, to expend funds
259 for the costs of administering the operations of the authority;

260 (m) Direct the escrow agent with respect to the
261 disbursement to the authority of the state's tobacco receipts and
262 receive and accept the state's tobacco receipts;

263 (n) Enter into contracts or agreements necessary,
264 proper or convenient for the effectuation of the powers and
265 purposes of the board and the authority;

266 (o) Invest the funds held by the authority under this
267 article in any investment permitted for funds of this state, other
268 than the state's retirement funds, or for funds of the political
269 subdivisions of this state, in revenue bonds of government units,
270 and in general obligations of other states whose general
271 obligation debt is rated not lower than the general obligation
272 debt of this state;

273 (p) Do all other things necessary or convenient to
274 exercise powers granted or reasonably implied by this article or
275 that may be necessary for the furtherance and accomplishments of
276 the purposes of the authority.

277 Before the date that is one (1) year and one (1) day after
278 which the authority no longer has any bonds outstanding, the
279 authority has no authority to file a voluntary petition under
280 Chapter 9 of the United States Bankruptcy Code or corresponding
281 chapters or sections as may, from time to time, be in effect, and
282 neither any public officer or any organization, entity or other
283 person shall authorize the authority to be or become a debtor
284 under Chapter 9 or any successor or corresponding chapter or
285 sections during the periods. The provisions of this paragraph are
286 for the benefit of the holders of any bonds and are a part of the
287 contractual obligation owed to the bondholders, and the state
288 shall not modify or delete the provisions of this paragraph during
289 the periods described in this article.

290 In the exercise of its powers in this article, the board and
291 the authority may obtain services in accordance with the
292 procedures, guidelines and criteria established by the board for
293 that purpose.

294 (5) (a) The board may issue bonds in the name of the
295 authority, from time to time, for the purposes and in the manner
296 stated in this section.

297 (b) All bonds must be secured solely by and payable
298 solely from the state's tobacco receipts, or the portion of the

299 state's tobacco receipts the board determines to pledge for
300 payment.

301 (c) Neither the members of the board nor any person
302 executing the bonds or any notes are liable personally on the
303 bonds or notes or be subject to any personal liability or
304 accountability by reason of the issuance of the bonds.

305 (d) The board has no power to pledge the faith, credit
306 or taxing power of this state or any of its political subdivisions
307 in connection with the issuance of the bonds, and each bond must
308 recite on its face that it is a special source bond of the
309 authority issued under and in accordance with this article, that
310 it is secured solely by and payable solely from the state's
311 tobacco receipts, that it is neither a general, legal nor moral
312 obligation of the state or any of its political subdivisions, and
313 that it is not backed by the full faith, credit or taxing power of
314 this state or any of its political subdivisions. Failure to
315 include this language on the face of any bond does not cause the
316 bond to become a general, legal or moral obligation of the state
317 or any of its political subdivisions, or a pledge of the full
318 faith, credit or taxing power of this state or any of its
319 political subdivisions.

320 (e) Any pledge of the state tobacco receipts made by
321 the authority is valid and binding from the time when the pledge
322 is made. The state tobacco receipts pledged and then or
323 thereafter received by the authority are immediately subject to
324 the lien of the pledge without any physical delivery of the
325 receipt or further act. The lien of the pledge is valid and
326 binding against all parties having claims of any kind in tort,
327 contract, or otherwise against the authority, irrespective of
328 whether the parties have notice of them. Neither the resolution
329 of the authority or any other instrument by which a pledge is
330 created need be recorded or filed to perfect the pledge.

331 (f) The authority may not issue any bond with a
332 scheduled maturity later than thirty (30) years after the date of
333 issuance.

334 (g) When issuing bonds for the purpose described in
335 this section or to refund the bonds, the authority may sell bonds
336 either in a negotiated transaction with one or more lead
337 underwriters selected by the board on the basis of criteria to be
338 established by the board, or through a competitive bidding process
339 in accordance with procedures to be established by the board. The
340 determination of whether to sell bonds through negotiation or
341 through competitive bidding must be made by the board.

342 (h) The authority may not issue any bonds unless the
343 board has first adopted its resolution authorizing the issuance,
344 finding that the issuance and the proposed use of the bond
345 proceeds is in accordance with this article, and setting out the
346 terms and conditions of the bonds and the covenants of the
347 authority with respect to the bonds. These terms must include the
348 issuance date or dates, the maturity date or dates, the principal
349 amount, the interest rates or the means of determining the same,
350 whether fixed or variable, the time, manner and currency for
351 paying interest and principal, the negotiability of the bonds and
352 any restrictions relating to the registration of the bonds; and
353 the covenants may include, without limitation, the establishment
354 and maintenance of dedicated reserve funds for the payment of debt
355 service on bonds if the state's tobacco receipts are inadequate in
356 any year, restrictions on the later issuance of additional bonds
357 or making the later issuance subject to certain conditions
358 relating to available debt service coverage or otherwise,
359 conditions on the timing of the release of all or a portion of the
360 state's tobacco receipts to the General Fund of this state, the
361 enforcement of the master settlement agreement, or any other
362 matter that the board considers appropriate, subject to this
363 section.

364 (i) The board may not authorize or cause the authority
365 to enter into any covenant that purports to create a general,
366 legal or moral obligation of this state or any of its political
367 subdivisions or to pledge the full faith, credit or taxing power
368 of the state or any of its political subdivisions; nor may the
369 board authorize or cause the authority to enter into any covenants
370 that purport to create a right on the part of the board, the
371 authority, any bondholder, or any trustee any right to recover
372 funds consisting of the state's tobacco receipts once those funds
373 have been deposited into the General Fund of the state in
374 accordance with the terms of this article. Any covenant in
375 violation of this subsection is void and of no effect.

376 (j) Subject to the requirements of this section, the
377 board may authorize the issuance of bonds of the authority for the
378 following purposes:

379 (i) Refunding on a current or advance-refunding
380 basis, any outstanding bonds of the authority; or

381 (ii) Obtaining funds for delivery to the Health
382 Care Expendable Fund. All proceeds of bonds issued for the
383 purpose described in this section must be delivered promptly to
384 the Health Care Expendable Fund, except as needed to defray the
385 costs of issuance of the bonds or to establish any required
386 reserve fund for the bonds.

387 (6) The authority and the board shall have no other assets
388 or property except the state's tobacco receipts as received, and
389 the right to receive the state's tobacco receipts.

390 (7) The authority and the board have no power to incur debt
391 or obligations or in any way to encumber their assets except by
392 the issuance of bonds, including the making of covenants in
393 relation to the issuing of bonds and notes in anticipation of the
394 issuance of the bonds, and the incurring of expenses and
395 obligations as authorized in this section.

396 (8) All accounts of the authority must be held and
397 maintained separately from all other funds, properties, assets and
398 accounts of this state and its other agencies. The board shall
399 keep an accurate account of all of its activities and all of its
400 receipts and expenditures and annually, in the month of January,
401 shall make a report of its activities to the Legislature, the
402 report to be in a form prescribed by the State Auditor. Audited
403 financial statements must be submitted to the State Auditor by
404 October 15 following the end of the fiscal year.

405 (9) (a) The bonds and the income from the bonds are exempt
406 from all taxation in the state except for inheritance, estate or
407 transfer taxes, regardless of the federal income tax treatment of
408 the interest from the bonds.

409 (b) The exercise of the powers granted by this article
410 are in all respects for the benefit of the citizens of this state
411 and for the promotion of their welfare, convenience and
412 prosperity. Property, whether real or personal, tangible or
413 intangible, of the authority and the income and operations of the
414 authority are exempt from taxation or assessment by the state or
415 any of its political subdivisions.

416 (c) It is lawful for executors, administrators,
417 guardians, committees and other fiduciaries to invest any monies
418 in their hands in bonds. Nothing contained in this section may be
419 construed as relieving any person from the duty of exercising
420 reasonable care in selecting investments.

421 (10) All of the state's tobacco settlement payments not
422 needed to pay (a) expenses of the authority during the next twelve
423 (12) months, or (b) debt service on bonds during the next twelve
424 (12) months, or fully to fund reserve accounts established by the
425 board with respect to bonds, not less frequently than annually and
426 at a time determined by the board in its resolutions authorizing
427 the issuance of bonds, shall be transferred to the Health Care
428 Expendable Fund. The determination by the board of the amount to

429 be transferred is final and is not reviewable by any court or
430 other body.

431 (11) At any time when bonds are outstanding and for one (1)
432 year and one (1) day thereafter, the state must not agree to the
433 amendment of the master settlement agreement without the approval
434 of the authority; and this restriction or amendment of the master
435 settlement agreement is a part of the covenant with the
436 bondholders.

437 (12) The state pledges and agrees with the authority, and
438 the holders of the bonds in which the authority has included that
439 pledge and agreement, that the state shall not limit or alter the
440 rights of the authority to fulfill the terms of its agreements
441 with those bondholders, and shall not in any way impair the rights
442 and remedies of the bondholders or the security for the bonds
443 until the bonds, together with the interest on them and all costs
444 and expenses in conjunction with any action or proceeding by or on
445 behalf of the bondholders, are fully paid and discharged.

446 (13) This act and all powers granted by this article must be
447 liberally construed to effectuate its intent and their purposes,
448 without implied limitations on them. This article constitutes
449 full and complete authority for all things contemplated to be done
450 in this article. All rights and powers granted in this article
451 shall be cumulative with those derived from other sources and
452 shall not, except as expressly stated in this article, be
453 construed in limitation thereof. Insofar as the provisions of
454 this article are inconsistent with the provisions of any other
455 act, general or special, the provisions of this article are
456 controlling. If any clause, sentence, paragraph, section or part
457 of this article is adjudged by any court of competent jurisdiction
458 to be invalid, this judgment shall not affect, impair or
459 invalidate the remainder of this article but is confined in its
460 operation to the clause, sentence, paragraph, section or part of

461 the article directly involved in the controversy in which the
462 judgment has been rendered.

463 **SECTION 6.** This act shall take effect and be in force from
464 and after July 1, 2005.