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.*

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.

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[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.

Education Technology Trust Fund

(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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