Bill Analysis

Mark C. Flanders *Legislative Service Commission*

Nonappropriation Provisions of

Am. Sub. S.B. 192

123rd General Assembly

(As Passed by the Senate)

Sens. Ray (by request), Drake, Finan

BILL SUMMARY

- Provides for the distribution of the almost $5 billion in payments that the state is expected to receive from 2000 through 2012 under an agreement with the major American tobacco manufacturers in settlement of state lawsuits against the industry.

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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 is expected to receive almost $5 billion in payments from the industry during the years from 2000 through 2012. The bill does not address payments that may be made by the manufacturers to the state after 2012.

Establishing funds to receive the payments

(R.C. 183.02; Section 8)

The bill 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 bill reestablishes it 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 bill establishes them in the state treasury and provides that they will retain their interest earnings. Three 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) Tobacco Use Prevention and Cessation Trust Fund ($1.26 billion). The money is to be appropriated for the use of a foundation that the bill creates and placed in an endowment fund to support the work of the foundation on a self-sustaining basis.

(2) Southern Ohio Agricultural and Community Development Trust Fund (5% of the payments credited to the Tobacco Master Settlement Agreement Fund from 2000 through 2011). Here, too, the money is intended to be appropriated for the use of a foundation that the bill creates and placed in an endowment fund.

(3) Law Enforcement Improvements Trust Fund ($25 million).

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 Tobacco Use Prevention and Cessation Trust Fund and the Southern Ohio Agricultural and Community Development Trust Fund that year, the bill prohibits the Director of Budget and Management from making any transfers at all from the Tobacco Master Settlement Agreement Fund. (The bill does not include the Law Enforcement Improvements Trust Fund in this provision, because money is to be transferred to it in 2000 and 2001 only and is thus viewed as not being at risk.)

If in any year from 2000 through 2012 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 credited to the Income Tax Reduction Fund. Under existing 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 bill).

The other five funds that the bill creates are to receive specified percentages, or amounts and percentages, of the sums that remain in the Tobacco Master Settlement Agreement Fund after the first three funds receive their shares. These five funds are:

(1) Public Health Priorities Trust Fund;

(2) Biomedical Research and Technology Transfer Trust Fund;

(3) Education Facilities Trust Fund;

(4) Education Facilities Endowment Fund;

(5) Education Technology Trust Fund.

Below is a detailed discussion of each of these eight funds and their uses and management.

<u>Tobacco Use Prevention and Cessation Trust Fund</u>

(R.C. 102.02, 183.02(A), 183.03 through 183.09, 183.30, and 183.31; Section 9)

The Tobacco Use Prevention and Cessation Trust Fund is to receive the following sums:

Year	**Amount**
2000 (first payment credited)	$ 104,855,222.85
2000 (second payment credited)	130,000,000.00
2001	135,000,000.00

Year	Amount
2002	140,000,000.00
2003	150,000,000.00
2004	150,000,000.00
2005	150,000,000.00
2006	150,000,000.00
2012	150,000,000.00

The bill 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 bill 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 to be a self-sustaining entity, although the bill does not limit the expenditures of the endowment fund to its investment earnings. The bill 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.

No money from the endowment fund is to be spent on political activity or lobbying--including the support of or opposition to candidates, ballot questions, referendums, initiatives, or similar activities. 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 must also specifically describe the types of youth smoking prevention programs that are to be eligible for consideration for grants and set forth the criteria by which applications for such grants will be considered by the

Foundation. These programs include (1) media campaigns directed to youth to prevent underage consumption of cigarettes, (2) school-based education programs to prevent youth smoking, (3) community-based youth programs involving youth smoking prevention through general youth development, and (4) retailer education and compliance efforts to prevent youth smoking. The plan can further provide for a grant for an annual statewide school-based survey to measure cigarette use and behavior toward cigarette use by individuals in grades 6-12 as provided by the Center for Disease Control Survey Standards or other similar survey standards. 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.

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) nine health professionals, health researchers, or representatives of health organizations--three 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) six 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, and Association of Ohio Health Commissioners. 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. (Ordinarily disclosure statements filed by members of boards for which no compensation is received other than reasonable and necessary expenses are required to be kept confidential.)

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; Section 10)

The Southern Ohio Agricultural and Community Development Trust Fund is to receive 5% of the payments credited to the Tobacco Master Settlement Agreement Fund from 2000 through 2011. Here, too, the bill 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. 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 bill 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.

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:

(1) Develop means for tobacco growers to grow other agricultural products voluntarily;

(2) Increase 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;

(3) Preserve agricultural land and soils in those same parts of Ohio;

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

(5) Provide 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. 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 14-member board of trustees consisting of (1) five ex officio members (that is, members who are on the board by virtue of their official positions--(a) the Director of Agriculture, as chairperson, (b) Director of Development, (c) Executive Director of the Ohio Rural Development Partnership, (d) Director of the Ohio State University

Extension, and (e) a designee of the Director of Agriculture, (2) two residents of the southern Ohio region with experience in local economic development or community development appointed by the Governor, (3) three active farmers from southern Ohio appointed by the Governor, (4) one member of the Senate appointed by the President of the Senate and one appointed by its Minority Leader, and (5) likewise, one member of the House appointed by the Speaker and one appointed by its Minority Leader. The four legislators are to be nonvoting members of the Foundation. All the Governor's appointees except the ex officio members are to be appointed with the advice and consent of the Senate and serve five-year staggered terms. Each of the legislative members is to serve at the pleasure of the member's appointing authority. 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 Foundation 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.

Law Enforcement Improvements Trust Fund

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

The Law Enforcement Improvements Trust Fund is to receive two payments of $10 million each in 2000 and one payment of $5 million 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)

After the first three trust funds receive the amounts allocated to them, the other five trust funds are to receive specified percentages of the balance that remains in the Tobacco Master Settlement Agreement Fund. The first of these five funds--Ohio's Public Health Priorities Trust Fund--is to receive the following percentages:

Year	**Percentage**
2000	6.00
2001	7.50

Year	Percentage
2002	6.00
2003	6.50
2004	9.50
2005	10.00
2006	10.50
2007	6.00
2008	6.00
2009	6.25
2010	6.50
2011	6.75
2012	12.00

Money credited to the fund is to be used for seven 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) A program funded through the Department of Health to provide assistance to low-income persons whose health has been adversely affected by tobacco use;

(5) Partial reimbursement, on a county basis, of public hospitals, free medical clinics, and similar organizations or programs that provide free, uncompensated care to the general public;

(6) A program funded through the Department of Human Services to develop and enhance outreach activities for enrolling eligible children and families in Medicaid and other health care coverage programs authorized by state law;

(7) Public health programs administered by the Department of Health relating to disease prevention and health promotion.

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 11)

The second of the five 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	3.00
2001	15.75
2002	11.75
2003	12.00
2004	16.75
2005	17.50
2006	18.00
2007	15.00
2008	13.75
2009	13.75
2010	13.75
2011	13.75
2012	21.50

The money in this fund is to be administered by a body to be called the Biomedical Research and Technology Transfer Commission, which the bill 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 technology 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 23 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) Eleven members, who must not be or represent potential recipients of grants from the Commission. Of these (a) five are to be appointed by the Governor, two of whom must be experts in 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;

(6) 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 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 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 select a chairperson from among its members and 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 Facilities Trust Fund

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

The third of the five funds that are to receive the balance of the amount that remains in the Tobacco Master Settlement Agreement Fund each year is the Education Facilities Trust Fund. It is to receive the following percentages of that balance, minus $5 million, per year:

Year	**Percentage**
2000	82.75
2001	70.00
2002	74.00
2003	73.75
2004	69.00
2005	68.25
2006	67.75
2007	75.00
2008	74.75
2009	74.75

Year	Percentage
2010	74.75
2011	74.75
2012	49.60

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 bill 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 Ohio.

From 2000 through 2012, the $5 million per year that the bill allocates to school facilities but does not credit to the Education Facilities Trust Fund is to be transferred to the endowment fund. 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.

Education Technology Trust Fund

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

The last of the five funds that are to receive the balance of the amount that remains in the Tobacco Master Settlement Agreement Fund each year--after the Tobacco Use Prevention and Cessation Trust Fund, Southern Ohio Agricultural and Community Development Trust Fund, and Law Enforcement Improvements Trust Fund receive their allocations--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	8.25
2001	6.75
2002	8.25
2003	7.75
2004	4.75
2005	4.25
2006	3.75
2007	4.00
2008	5.50
2009	5.25
2010	5.00
2011	4.75
2012	16.90

Future funding for school districts

(R.C. 107.031)

Under existing 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 bill 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 bill requires the Treasurer of State to keep all money received from Tobacco Master Settlement Agreement payments or from distributions that the bill 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 bill 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.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-12-99	p. 1049
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