

Approved:

April 20, 2000

Date

MINUTES OF THE SENATE WAYS & MEANS COMMITTEE.

The meeting was called to order by Chairperson Dave Kerr at 1:30 p.m. on March 31, 2000 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Alan Conroy, Chief Fiscal Analyst, KLRD
Rae Anne Davis, KS Legislative Research Department
Debra Hollon, KS Legislative Research Department
Norman Furse, Revisor of Statutes
Michael Corrigan, Asst. Revisor of Statutes
Judy Bromich, Administrative Assistant to the Chairman
Ronda Miller, Committee Secretary

Conferees appearing before the committee:
Rebecca Floyd, General Counsel for K DFA

Others attending: See attached list

Chairman Kerr noted that the Revisor had drafted a bill with the language suggested by K DFA to address the specifics of tobacco securitization, and it would be his intent to delete the existing language from **HB 2559** and amend the language of the bill draft (Attachment 1) into Senate Substitute for **HB 2559**.

Rebecca Floyd, General Counsel for K DFA, appeared before the Committee to review the bill draft. Most of the questions pertained to how language of the new proposal merged into existing law. Following discussion, there was general consensus that the concepts of tobacco securitization were in the bill. Members agreed that, following adoption of conceptual and technical amendments, the bill should be advanced to the Senate for consideration, realizing that it would be different than the bill draft which was before them.

Senator Petty moved, Senator Morris seconded that bill draft 9rs 2533 be conceptually amended by moving the language in Sec. 1 (e) to subsection (v); by clarifying what specific sources might also be pledged (line 18, page 13) and by clarifying that "such bonds to be payable solely from tobacco asset payments and interest thereon" (lines 18 & 19, page 13); by clarifying that the new language in Sec. 3 (f) apply only to the new entity; by allowing revisors to make any technical adjustments needed in the bill; and by deleting the original language in **HB 2559** and substituting the new language into **Sen. Sub. for HB 2559**. The motion carried on a voice vote. The amendments proposed by the Committee in **Senate Substitute for HB 2559** can be found in (Attachment 2).

Senator Petty offered a motion which was seconded by Senator Morris to recommend **Sen. Sub. for HB 2559** favorably for passage. The motion carried on a roll call vote.

The Chairman adjourned the meeting at 2:30 p.m. The next meeting will be April 5, 2000.

1 AN ACT concerning sale of certain state tobacco settlement
2 receipts by the state; creating the Kansas tobacco settlement
3 financing corporation as subsidiary of the Kansas development
4 finance authority; authorizing the issuance of bonds payable
5 from tobacco asset payments; amending K.S.A. 74-8909 and
6 K.S.A. 1999 Supp. 38-2101, 74-8904 and 74-8905 and repealing
7 the existing sections; also repealing K.S.A. 1999 Supp.
8 74-8905a.

9 Be it enacted by the Legislature of the State of Kansas:

10 Section 1. K.S.A. 1999 Supp. 38-2101 is hereby amended to
11 read as follows: 38-2101. (a) There is hereby established in the
12 state treasury the Kansas endowment for youth fund which shall
13 constitute a trust fund and shall be invested, managed and
14 administered in accordance with the provisions of this act by the
15 board of trustees of the Kansas public employees retirement
16 system established by K.S.A. 74-4905 and amendments thereto.

17 (b) All of the moneys received by the state pursuant to the
18 tobacco litigation settlement agreements entered into by the
19 attorney general on behalf of the state of Kansas, or pursuant to
20 any judgment rendered, regarding the litigation against tobacco
21 industry companies and related entities or pursuant to a sale of
22 the right to receive such moneys by the secretary of
23 administration on behalf of the state of Kansas as authorized by
24 section 5 and amendments thereto, shall be deposited in the state
25 treasury and credited to the Kansas endowment for youth fund.
26 All such moneys shall constitute an endowment which shall remain
27 credited to the Kansas endowment for youth fund except as
28 provided in this section or in K.S.A. 1999 Supp. 38-2102 and

1 amendments thereto for transfers to the children's initiatives
2 fund. Expenditures may be made from the Kansas endowment for
3 youth fund for the payment of the operating expenses of the
4 Kansas children's cabinet and the board of trustees, including
5 the expenses of investing and managing the moneys, which are
6 attributable to the Kansas endowment for youth fund. All moneys
7 credited to the Kansas endowment for youth fund shall be invested
8 to provide an ongoing source of investment earnings available for
9 periodic transfer to the children's initiatives fund in
10 accordance with this act. All expenditures from the Kansas
11 endowment for youth fund shall be made in accordance with
12 appropriation acts upon warrants of the director of accounts and
13 reports issued pursuant to vouchers approved by the chairperson
14 of the board of trustees of the Kansas public employees
15 retirement system or by the chairperson's designee.

16 (c) On the effective date of this act, the director of
17 accounts and reports shall transfer all moneys credited to the
18 children's health care programs fund to the Kansas endowment for
19 youth fund and the children's health care programs fund is hereby
20 abolished. On and after July 1, 1999, whenever the children's
21 health care programs fund, or words of like effect, is referred
22 to or designated by statute, contract or other document, such
23 reference or designation shall be deemed to apply to the Kansas
24 endowment for youth fund.

25 Sec. 2. K.S.A. 1999 Supp. 74-8904 is hereby amended to read
26 as follows: 74-8904. Except as otherwise limited by this act, the

1 authority shall have the following powers to:

2 (a) Sue and be sued;

3 (b) have a seal and alter such seal;

4 (c) make and alter bylaws for its organization and internal
5 management;

6 (d) adopt such rules and regulations as may be necessary to
7 carry out the purposes of this act;

8 (e) acquire, hold and dispose of real and personal property
9 of any nature, tangible or intangible, for its corporate
10 purposes; and to receive such part of the state tobacco
11 settlement receipts, as defined in section 5 and amendments
12 thereto, pursuant to the master settlement agreement, as defined
13 in section 5 and amendments thereto, as the legislature shall
14 from time-to-time authorize to be assigned or sold.

15 (f) appoint officers, agents and employees, prescribe their
16 duties and qualifications and fix their compensation;

17 (g) borrow money and to issue notes, bonds and other
18 obligations pursuant to K.S.A. 74-8905, and amendments thereto,
19 whether or not the interest on which is subject to federal income
20 taxation, and to provide for the rights of the lenders or holders
21 thereof;

22 (h) purchase notes or participations in notes evidencing
23 loans which are secured by mortgages or security interests and to
24 enter into contracts in that regard;

25 (i) make secured or unsecured loans for any of the purposes
26 for which bonds of the authority may be issued under this act or

1 to low and moderate income multifamily rental housing projects
2 participating in programs established in section 42 of the
3 federal internal revenue code, and provide financing for housing
4 projects and programs in participation with programs established
5 by the United States department of housing and urban development
6 or the Kansas department of commerce and housing; except as
7 otherwise provided in this subsection, nothing in this act shall
8 be construed to authorize the authority to make loans directly to
9 individuals to finance housing developments;

10 (j) sell mortgages and security interests at public or
11 private sale, to negotiate modifications or alterations in
12 mortgage and security interests, to foreclose on any mortgage or
13 security interest in default or commence any action to protect or
14 enforce any right conferred upon it by any law, mortgage,
15 security agreement, contract or other agreement, and to bid for
16 and purchase property which was the subject of such mortgage or
17 security interest at any foreclosure or at any other sale, to
18 acquire or take possession of any such property, and to exercise
19 any and all rights as provided by law for the benefit or
20 protection of the authority or mortgage holders;

21 (k) collect fees and charges in connection with its loans,
22 bond guarantees, commitments and servicing, including, but not
23 limited to, reimbursement of costs of financing as the authority
24 shall determine to be reasonable and as shall be approved by the
25 authority;

26 (l) make and execute contracts for the servicing of

1 mortgages acquired by the authority pursuant to this act, and to
2 pay the reasonable value of services rendered to the authority
3 pursuant to those contracts;

4 (m) enter into agreements with and accept gifts, grants,
5 loans and other aid from the federal government, the state, any
6 state agency, any political subdivision of the state, or any
7 person or corporation, foundation or legal entity, and to agree
8 to and comply with any conditions attached to federal and state
9 financial assistance not inconsistent with the provisions of this
10 act;

11 (n) invest moneys of the authority not required for
12 immediate use, including proceeds from the sale of any bonds, in
13 such manner as the board shall determine, subject to any
14 agreement with bondholders stated in the authorizing resolution
15 providing for the issuance of bonds;

16 (o) procure insurance against any loss in connection with
17 its programs, property and other assets;

18 (p) provide technical assistance and advice to the state or
19 political subdivisions of the state and to enter into contracts
20 with the state or political subdivisions of the state to provide
21 such services. The state or political subdivisions of the state
22 are hereby authorized to enter into contracts with the authority
23 for such services and to pay for such services as may be provided
24 them;

25 (q) establish accounts in one or more depositories;

26 (r) lease, acquire, construct, sell and otherwise deal in

1 and contract concerning any facilities;

2 (s) have and exercise all of the powers granted to the
3 public housing authorities by the state, except that the
4 authority shall not have the power of eminent domain;

5 (t) do any and all things necessary or convenient to carry
6 out purposes of the authority and exercise the powers given and
7 granted in this act;

8 (u) assist minority businesses in obtaining loans or other
9 means of financial assistance. The terms and conditions of such
10 loans or financial assistance, including the charges for interest
11 and other services, will be consistent with the provisions of
12 this act. In order to comply with this requirement, efforts must
13 be made to solicit for review and analysis proposed minority
14 business ventures. Basic loan underwriting standards will not be
15 waived to inconsistently favor minority persons or businesses
16 from the intent of the authority's lending practices; and

17 (v) form one or more subsidiary corporations under K.S.A.
18 17-6001 et seq., and amendments thereto, in accordance with the
19 procedures therein contained or as otherwise provided in this
20 subsection (v). Each subsidiary corporation shall be subject to
21 the same restrictions and limitations as to the powers and
22 purposes to which the authority is subject. Each provision of
23 this act regarding the issuance of bonds or the exercise of any
24 other power or privilege by the authority shall apply to each
25 subsidiary corporation in the exercise of any power, obligation
26 or duty delegated by the authority to such subsidiary

1 corporation. The authority may delegate any of its powers,
2 obligations and duties to any subsidiary corporation by inclusion
3 of such powers, obligations and duties in the articles of
4 incorporation of the subsidiary corporation. Subsidiary
5 corporations so formed shall constitute legal entities separate
6 and distinct from each other, the authority and the state. The
7 authority shall not be liable for the debts or obligations or for
8 any actions or inactions of its subsidiary corporations unless
9 the authority expressly agrees otherwise in writing. The
10 authority may make loans or grants to a subsidiary corporation
11 from time to time to enable the subsidiary corporation to carry
12 out its purposes. The members of the authority shall constitute
13 all of the directors of each subsidiary corporation.

14 The state, any municipality or any state commission, public
15 authority, agency, officer, department, board or division
16 authorized and empowered to enter into agreements with, to grant,
17 convey, lease or otherwise transfer any property to, or to
18 otherwise transact business with the authority, shall have the
19 same authorization and power to engage in these activities with
20 each subsidiary corporation of the authority. Each such
21 subsidiary corporation shall have the power to contract with the
22 authority to do all things necessary and convenient to carry out
23 the purposes of such subsidiary corporation.

24 One or more such subsidiary corporation may be formed for
25 purposes of establishing state tax credit equity funds to assist
26 in the development of low-income and middle-income housing and

1 obtain financing through participation in the program established
2 in section 42 of the federal internal revenue code.

3 Actions of the authority or any subsidiary corporation
4 relating to housing pursuant to this subsection (v) shall be
5 carried out in accordance with any terms, conditions and
6 limitations relating to policy issues regarding housing, as
7 established by the secretary of commerce and housing.

8 One or more such subsidiary corporations may be formed for
9 purposes of acquiring or conveying on behalf of the state and
10 pursuant to this act a project of statewide as well as local
11 importance, issuing bonds on behalf of the state pursuant to this
12 act to finance a project of statewide as well as local importance
13 or otherwise financing on behalf of the state pursuant to this
14 act a project of statewide as well as local importance. The
15 Kansas statewide projects development corporation is hereby
16 created in accordance with this section. Filing of articles of
17 incorporation of Kansas statewide projects development
18 corporation with the secretary of state shall not be required.

19 The Kansas tobacco settlement financing corporation is hereby
20 created in accordance with this section as a subsidiary of the
21 authority, a public body politic and corporate and an independent
22 instrumentality of the state exercising essential public
23 functions, effective upon the approval of articles of
24 incorporation by the authority. The Kansas tobacco settlement
25 financing corporation is created for the purposes of issuing
26 bonds on behalf of the state and purchasing from the state all or

1 a portion of the tobacco assets, as defined in section 5 and
2 amendments thereto. Filing of articles of incorporation of Kansas
3 tobacco settlement financing corporation with the secretary of
4 state shall not be required.

5 Sec. 3. K.S.A. 1999 Supp. 74-8905 is hereby amended to read
6 as follows: 74-8905. (a) The authority is hereby authorized and
7 empowered to issue bonds, either for a specific activity or on a
8 pooled basis for a series of related or unrelated activities or
9 projects duly authorized by a political subdivision or group of
10 political subdivisions of the state in such amounts as shall be
11 determined by the authority for the purpose of financing projects
12 of statewide as well as local importance as defined pursuant to
13 K.S.A. 12-1744 and amendments thereto, capital improvement
14 facilities, educational facilities, health care facilities and
15 housing developments. Nothing in this act shall be construed to
16 authorize the authority to issue bonds or use the proceeds
17 thereof to (1) purchase, condemn, or otherwise acquire a utility
18 plant or distribution system owned or operated by a regulated
19 public utility ~~or~~; (2) finance any capital improvement
20 facilities, educational facilities, or health care facilities
21 which are authorized under the laws of the state to be financed
22 by the issuance of general obligation or utility revenue bonds of
23 a political subdivision, except that the acquisition by the
24 authority of general obligation or utility revenue bonds issued
25 by political subdivisions with the proceeds of pooled bonds shall
26 not violate the provisions of the foregoing; or (3) purchase,

1 acquire, construct, reconstruct, improve, equip, furnish, repair,
2 enlarge or remodel property for any swine production facility on
3 agricultural land which is owned, acquired, obtained or leased by
4 a corporation, limited liability company, limited partnership,
5 corporate partnership or trust. Nothing in this subsection (a)
6 shall prohibit the issuance of bonds by the authority when any
7 statute specifically authorizes the issuance of bonds by the
8 authority or approves any activity or project of a state agency
9 for purposes of authorizing any such issuance of bonds in
10 accordance with this section and provides an exemption from the
11 provisions of this subsection (a).

12 (b) The authority is hereby authorized and empowered to
13 issue bonds for activities and projects of state agencies as
14 requested by the secretary of administration. No bonds may be
15 issued pursuant to this act for any activity or project of a
16 state agency unless the activity or project either has been
17 approved by an appropriation or other act of the legislature or
18 has been approved by the state finance council acting on this
19 matter which is hereby characterized as a matter of legislative
20 delegation and subject to the guidelines prescribed in subsection
21 (c) of K.S.A. 75-3711c and amendments thereto. When requested to
22 do so by the secretary of administration, the authority is
23 further authorized and empowered to issue bonds for the purpose
24 of refunding, whether at maturity or in advance of maturity, any
25 outstanding bonded indebtedness of any state agency. The revenues
26 of any state agency which are pledged as security for any bonds

1 of such state agency which are refunded by refunding bonds of the
2 authority may be pledged to the authority as security for the
3 refunding bonds.

4 (c) The authority is hereby authorized and empowered to
5 issue bonds for the purpose of financing industrial enterprises,
6 agricultural business enterprises, educational facilities, health
7 care facilities and housing developments, or any combination of
8 such facilities, or any interest in facilities, including without
9 limitation leasehold interests in and mortgages on such
10 facilities. No less than 30 days prior to the issuance of any
11 bonds authorized under this act with respect to any project or
12 activity which is to be undertaken for the direct benefit of any
13 person or entity which is not a state agency or a political
14 subdivision, written notice of the intention of the authority to
15 provide financing and issue bonds therefor shall be given by the
16 president of the authority to the governing body of the city in
17 which the project or activity is to be located, or, if the
18 project or activity is not proposed to be located within a city,
19 such notice shall be given to the governing body of the county.
20 No bonds for the financing of the project or activity shall be
21 issued by the authority for a one-year period if, within 15 days
22 after the giving of such notice, the governing body of the
23 political subdivision in which the project or activity is
24 proposed to be located shall have duly enacted an ordinance or
25 resolution stating express disapproval of the project or activity
26 and shall have notified the president of the authority of such

1 disapproval.

2 (d) The authority is hereby authorized and empowered to
3 issue bonds for the purpose of establishing and funding one or
4 more series of venture capital funds in such principal amounts,
5 at such interest rates, in such maturities, with such security,
6 and upon such other terms and in such manner as is approved by
7 resolution of the authority. The proceeds of such bonds not
8 placed in a venture capital fund or used to pay or reimburse
9 organizational, offering and administrative expenses and fees
10 necessary to the issuance and sale of such bonds shall be
11 invested and reinvested in such securities and other instruments
12 as shall be provided in the resolution under which such bonds are
13 issued. Moneys in a venture capital fund shall be used to make
14 venture capital investments in new, expanding or developing
15 businesses, including, but not limited to, equity and debt
16 securities, warrants, options and other rights to acquire such
17 securities, subject to the provisions of the resolution of the
18 authority. The authority shall establish an investment policy
19 with respect to the investment of the funds in a venture capital
20 fund not inconsistent with the purposes of this act. The
21 authority shall enter into an agreement with a management company
22 experienced in venture capital investments to manage and
23 administer each venture capital fund upon terms not inconsistent
24 with the purposes of this act and such investment policy. The
25 authority may establish an advisory board to provide advice and
26 consulting assistance to the authority and the management company

1 with respect to the management and administration of each venture
2 capital fund and the establishment of its investment policy. All
3 fees and expenses incurred in the management and administration
4 of a venture capital fund not paid or reimbursed out of the
5 proceeds of the bonds issued by the authority shall be paid or
6 reimbursed out of such venture capital fund.

7 (e) The authority is hereby authorized and empowered to
8 issue bonds in one or more series for the purpose of financing a
9 project of statewide as well as local importance in connection
10 with a redevelopment plan that is approved by the authority in
11 accordance with K.S.A. 1999 Supp. 74-8921 and 74-8922, and
12 amendments thereto.

13 (f) The authority is hereby authorized and empowered to
14 issue bonds for the purpose of acquiring tobacco assets or
15 financing capital or operating expenditures for governmental
16 programs or facilities as required from time-to-time by the
17 secretary of administration, such bonds to be payable solely from
18 tobacco asset payments and any other source designated in the
19 trust indenture under which the bonds are issued.

20 ~~(f)~~ (g) The authority is hereby authorized and empowered to
21 use the proceeds of any bond issues herein authorized, together
22 with any other available funds, for venture capital investments
23 or for purchasing, leasing, constructing, restoring, renovating,
24 altering or repairing facilities as herein authorized, for making
25 loans, purchasing mortgages or security interests in loan
26 participations and paying all incidental expenses therewith,

1 paying expenses of authorizing and issuing the bonds, paying
2 interest on the bonds until revenues thereof are available in
3 sufficient amounts, purchasing bond insurance or other credit
4 enhancements on the bonds, and funding such reserves as the
5 authority deems necessary and desirable. All moneys received by
6 the authority, other than moneys received by virtue of an
7 appropriation, are hereby specifically declared to be cash funds,
8 restricted in their use and to be used solely as provided herein.
9 No moneys of the authority other than moneys received by
10 appropriation shall be deposited with the state treasurer.

11 ~~(g)~~ (h) Any time the authority is required to publish a
12 notification pursuant to the tax equity and fiscal responsibility
13 act of 1982, the authority shall further publish such
14 notification in the Kansas register.

15 ~~(h)~~ (i) Any time the authority issues bonds pursuant to this
16 section, the authority shall publish notification of such
17 issuance of bonds 14 days prior to any bond hearing in the
18 official county newspaper where such bonds will be used and in
19 the Kansas register.

20 Sec. 4. K.S.A. 74-8909 is hereby amended to read as follows:
21 74-8909. Any pledge of revenues, moneys, funds or other property
22 made by the authority or its subsidiary corporation shall be
23 valid and binding from the time when such pledge is made and the
24 revenues, moneys, funds or other property so pledged and
25 thereafter received by the authority or its subsidiary
26 corporation shall immediately be subject to the lien of such

1 pledge without such physical delivery thereof or further act on
2 the part of the authority or its subsidiary corporation, and the
3 lien of any such pledge shall be valid and binding as against all
4 parties having claims of any kind in tort, contract or otherwise
5 against the authority or its subsidiary corporation, irrespective
6 of whether such parties have notice thereof. Neither the
7 authorizing resolution nor any other instrument by which a pledge
8 is created need be filed or recorded except in the records of the
9 authority or its subsidiary corporation.

10 New Sec. 5. (a) The following words or terms used in this
11 section shall have the following meanings unless a different
12 meaning clearly appears from the context:

13 (1) "Asset sale agreement" means the agreement or agreements
14 between the state as a seller of the tobacco assets and the
15 corporation as purchaser of the tobacco assets.

16 (2) "Corporation" means the Kansas tobacco settlement
17 financing corporation created pursuant to subsection (v) of
18 K.S.A. 74-8904 and amendments thereto.

19 (3) "Residual assets" means the interest of the corporation
20 in the bond proceeds and the tobacco assets and all revenues,
21 moneys, funds, property, other income or receipts with respect to
22 the tobacco assets paid or payable to the corporation or a
23 trustee for the account of the corporation or for the holders of
24 bonds that are in excess of the expenses of the corporation, the
25 amounts required for debt service on bonds and any contractual
26 obligations of the corporation.

1 (4) "State tobacco settlement receipts" means all moneys
2 payable to the state pursuant to the master settlement agreement,
3 without giving effect to the sale of any portion thereof.

4 (5) "Tobacco assets" means all right, title and interest in
5 and to the portion of the state tobacco settlement receipts that
6 may be sold to the corporation from time to time.

7 (6) "Master settlement agreement" means the master
8 settlement agreement and related documents between the state and
9 leading United States tobacco product manufacturers dated
10 November 23, 1998, and including the consent decree and final
11 judgment entered in the State of Kansas v. R.J. Reynolds Tobacco
12 Company et al., district court of Shawnee county, Kansas,
13 division 2, No. 96-CV-919.

14 (7) "Tobacco asset payments" means the amounts paid or
15 payable to the corporation pursuant to an asset sale agreement
16 and the master settlement agreement.

17 (b) The secretary of administration is authorized to sell to
18 the corporation, from time to time, all or a portion of the state
19 tobacco settlement receipts and, in particular, to execute and
20 deliver an asset sale agreement. Such agreement shall provide
21 that the purchase price payable to the state for the tobacco
22 assets sold shall consist of the net proceeds (after capitalized
23 interest, costs, fees, reserves and credit and liquidity
24 enhancements as the corporation determines to be desirable in
25 issuing, securing and marketing the bonds) of bonds issued
26 pursuant to subsection (f) of K.S.A. 74-8905 and amendments

1 thereto, to the extent such bonds are not refunding bonds,
2 together with any interest in the residual assets or any
3 subordinate interest provided in the asset sale agreement. The
4 purchase price payable to the state from the sale from time to
5 time of all or a portion of the state tobacco settlement receipts
6 shall be deposited in the Kansas endowment for youth fund.

7 (c) Any sale of tobacco assets by the state shall be treated
8 as a true sale and absolute transfer of the property so
9 transferred and not as a pledge or other security interest for
10 any borrowing by the state. The characterization of such a sale
11 as an absolute transfer by the participants shall not be negated
12 or adversely affected by the fact that only a portion of the
13 state tobacco settlement receipts is sold, nor by the state's
14 acquisition or retention of an ownership interest in the residual
15 assets or a subordinate interest in the tobacco assets, nor by a
16 characterization of the bonds or the corporation for purposes of
17 accounting, taxation or securities regulation, nor by any other
18 factor whatsoever.

19 (d) On and after the effective date of a sale of tobacco
20 assets pursuant to an asset sale agreement, the state shall have
21 no right, title or interest in or to such tobacco assets sold,
22 and the tobacco asset payments shall be property of the
23 corporation or its transferee or assignee and not of the state,
24 and shall be owned, received, held and disbursed by the
25 corporation or its transferee or assignee and not the state. On
26 or before the date of the issuance of bonds pursuant to

1 subsection (f) of K.S.A. 74-8905 and amendments thereto and on or
2 before the effective date of any subsequent sale, the state shall
3 notify the escrow agent under the master settlement agreement
4 that the tobacco assets have been sold to the corporation and
5 irrevocably instruct such escrow agent that, subsequent to an
6 effective date, the tobacco asset payments are to be paid
7 directly to the corporation or its transferee or assignee.

8 (e) The state pledges and agrees for the benefit of the
9 holders of any bonds in which the corporation has included such
10 pledge and agreement, that the state will (1) irrevocably direct
11 the escrow agent under the master settlement agreement to
12 transfer all tobacco asset payments directly to the corporation
13 or its transferee or assignee, (2) enforce the rights of the
14 corporation or its transferee or assignee to receive the tobacco
15 asset payments to the full extent of the state's right to receive
16 state tobacco settlement receipts permitted by the terms of the
17 master settlement agreement, (3) not amend the master settlement
18 agreement in any manner that would materially impair the rights
19 of the holders of bonds, (4) not limit or alter the rights of the
20 corporation to fulfill the terms of its agreements with such
21 holders of the bonds, and (5) not in any way impair the rights
22 and remedies of such holders of the bonds or the security for
23 such bonds until such bonds, together with the interest thereon
24 and all costs and expenses in connection with any action or
25 proceeding by or on behalf of such holders of the bonds, are
26 fully paid and discharged.

1 (f) The sale of tobacco assets pursuant to subsection (b)
2 shall be by negotiation approved by the secretary of
3 administration and shall be exempt from competitive bid and
4 public notice requirements applicable to the purchase and sale of
5 property by the state.

6 New Sec. 6. The district court of Shawnee county shall have
7 exclusive jurisdiction of any suit brought by or against the
8 Kansas tobacco settlement financing corporation, and process in
9 such suit shall be served on the chairperson of the board of
10 directors of the Kansas tobacco settlement financing corporation.

11 New Sec. 7. State tobacco settlement receipts, tobacco
12 assets and tobacco asset payments shall be general intangibles
13 within the meaning of the Kansas uniform commercial code.

14 Sec. 8. K.S.A. 74-8909 and K.S.A. 1999 Supp. 38-2101,
15 74-8904, 74-8905 and 74-8905a are hereby repealed.

16 Sec. 9. This act shall take effect and be in force from and
17 after its publication in the Kansas register.

KUTAK ROCK LLP
DRAFT 4/4/00

MEMORANDUM

TO: REBECCA E. FLOYD
FROM: JOEL W. VANDERVEEN
DATE: APRIL 4, 2000
RE: PROPOSED AMENDMENTS TO SENATE SUBSTITUTE FOR
HOUSE BILL 2559

Below are proposed changes to the Senate Substitute for House Bill 2559. Changes to the existing bill are marked in bold.

1. Page 3, beginning on line 10 – delete words:

(e) acquire, hold and dispose of real and personal property of any nature, tangible or intangible, for its corporate purposes; ~~and to receive such part of the state tobacco settlement receipts, as defined in section 5 and amendments thereto, pursuant to the master settlement agreement, as defined in section 5 and amendments thereto, as the legislature shall from time to time authorize to be assigned or sold.~~

2. Page 6, line 16 – delete word:

(u) assist minority businesses in obtaining loans or other means of financial assistance. The terms and conditions of such loans or financial assistance, including the charges for interest and other services, will be consistent with the provisions of this act. In order to comply with this requirement, efforts must be made to solicit for review and analysis proposed minority business ventures. Basic loan underwriting standards will not be waived to inconsistently favor minority persons or businesses from the intent of the authority's lending practices; ~~and~~

3. Page 8, beginning on line 19 – revise paragraph:

The Kansas tobacco settlement financing corporation is hereby created in accordance with this section as a subsidiary of the authority, a public body politic and corporate and an independent instrumentality of the state exercising essential public functions, effective upon the approval of articles of incorporation by the authority. The Kansas tobacco settlement financing corporation is created for the purposes of (i) receiving issuing bonds on behalf of the state and purchasing from the state all or a portion of the tobacco assets, as defined in section 5 and amendments thereto, (ii) transferring, selling, pledging, assigning or otherwise conveying all or any portion of such tobacco assets, (iii) entering into contracts, including trusts, with any person or entity, including the state, with respect to or regarding all or any portion of the tobacco assets, (iv) issuing bonds authorized in subsection (f) of section K.S.A. 74-8905 and

01-252307.01

Senate Ways and Means Committee

Date *March 31, 2000*

Attachment #

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(v) issuing other obligations secured by all or a portion of the tobacco assets. Filing of articles of incorporation of Kansas tobacco settlement financing corporation with the secretary of state shall not be required.

4. Page 9, line 4 – add a new subsection:

(w) to establish trusts in connection with any of the purposes of this act.

5. Page 13, beginning on line 13 – revise:

(f) The authority is hereby authorized and empowered to issue bonds for the purpose of acquiring tobacco assets or financing capital or operating expenditures for governmental programs or facilities as required from time-to-time by the secretary of administration, such bonds to be payable solely from tobacco asset payments, as defined in Section 5 and amendments thereto, or ~~any other source~~ other property legally available to be pledged to the payment of the bonds and pledged in the trust indenture under which the bonds are issued.

6. Page 14, beginning on line 20 – revise:

Sec. 4. K.S.A. 74-8909 is hereby amended to read as follows: 74-8909. Any pledge of revenues, moneys, funds or other property made by the authority or its subsidiary corporation shall be valid and binding from the time when such pledge is made and the revenues, moneys, funds or other property so pledged and thereafter received by the authority or its such subsidiary corporation shall immediately be subject to the lien of such pledge without such physical delivery thereof or further act on the part of the authority or its such subsidiary corporation, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority or its such subsidiary corporation, irrespective of whether such parties have notice thereof. Neither the authorizing resolution nor any other instrument by which a pledge is created need be filed or recorded except in the records of the authority or its such subsidiary corporation.

7. Page 15, line 14 – delete word:

(1) “Asset sale agreement” means the agreement or agreements between the state as a seller of the tobacco assets and the corporation as purchaser of the tobacco assets.

8. Page 17, beginning on line 19 – revise subsections (d) and (e):

(d) On and after the effective date of a sale of tobacco assets pursuant to an asset sale agreement, the state shall have no right, title or interest in or to such tobacco assets sold. ~~and~~ ~~‡~~ The tobacco asset payments shall be property of the corporation or its transferee or assignee and not of the state, and shall be owned, received, held and disbursed by the corporation or its transferee or assignee and not the state. On or before the effective date of ~~the any issuance of bonds pursuant to subsection (f) of K.S.A. 74-8905 and amendments thereto and on or before the effective date of any subsequent sale of tobacco assets pursuant to an asset sale agreement~~, the state shall notify the escrow agent under the master settlement agreement that the tobacco assets have been sold to the corporation and irrevocably instruct such escrow agent that, subsequent to an effective date, the tobacco asset payments are to be paid directly to the corporation or its transferee or assignee.

(e) The state pledges and agrees for the benefit of the holders of any bonds in which the corporation has included such pledge and agreement, that the state will (1) irrevocably direct the escrow agent under the master settlement agreement to transfer all tobacco asset payments directly to the corporation or its transferee or assignee, (2) enforce the rights of the corporation or its transferee or assignee to receive the tobacco asset payments to the full extent of the state's right to receive state tobacco settlement receipts ~~permitted by~~ pursuant to the terms of the master settlement agreement, (3) not amend the master settlement agreement in any manner that would materially impair the rights of the corporation or the holders of bonds, (4) not limit or alter the rights of the corporation or fulfill the terms of its agreements with such holders of the bonds, (5) not authorize the corporation to be a debtor under chapter 9 of the federal bankruptcy code, and ~~(5)~~ (6) not in any way impair the rights and remedies of such holders of the bonds or the security for such bonds until such bonds, together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders of the bonds, are fully paid and discharged.

9. Page 18, line 26 – add new subsection; re-letter following subsection:

(f) The secretary of administration shall obtain the approval of the state finance council prior to executing an asset sale agreement; provided that, no such approval shall be required if the terms of such asset sale agreement provide for a purchase price for tobacco assets, the present value of which, together with the present value of projected investment earnings on balances on deposit in the Kansas endowment for youth in excess of the application of funds pursuant to K.S.A. 1999 Supp. 38-2102 and amendments thereto, is equal to or greater than the present value of the projected state tobacco settlement receipts sold, together with the present value of projected investment earnings on balances on deposit in the Kansas endowment for youth in excess of the application of funds pursuant to K.S.A. 1999 Supp. 38-2102 and amendments thereto. For purposes of this subsection, present value shall mean the present value calculated assuming a discount rate equal to the true interest cost of interest payable on bonds or other obligations to be secured by the tobacco assets, as certified by the secretary of administration. For purposes of this subsection, projected investment earnings shall mean investment earnings at an assumed rate of ten percent compounded annually, as certified by the secretary of administration. For purposes of this subsection, projected state tobacco settlement receipts shall mean state tobacco settlement receipts projected to be received assuming (i) inflation at an annual rate of three percent beginning as of the first day of the state fiscal year during which the asset sale agreement is executed, (ii) volume reductions under the master settlement agreement at an annual rate of two and one half percent beginning as of the first day of the state fiscal year during which the asset sale agreement is executed and (iii) the settling states adjustments as provided in the master settlement agreement, as certified by the secretary of administration. The approval of the asset sale agreement by the state finance council, if required pursuant to this subsection, is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and amendments thereto. Approval by the state finance council may be given when the legislature is in session.

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