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**REVISOR of STATUTES**

LEGISLATURE of THE STATE of KANSAS  
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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

**MEMORANDUM**

To: Chairman Waymaster and members of the House Appropriations Committee

From: Jill A. Wolters, First Assistant Revisor

Date: June 1, 2017

Subject: **HB2430 Authorizing the sale of certain tobacco settlement receipts; creating the great plains tobacco settlement financing corporation; authorizing the issuance of bonds payable from the tobacco asset payments; amendments to the Kansas development finance authority.**

Pursuant to the provisions of HB2430, the secretary of administration is authorized to sell to the great plains tobacco settlement financing corporation all or a portion of the tobacco assets. Tobacco assets are defined as all rights, title and interest in and to the portion of the state tobacco settlement receipts in an amount equal to \$19,000,000 annually that may be sold to the financing corporation. The asset sale agreement shall provide that the purchase price payable to the state for the tobacco assets sold shall consist of the net proceeds of bonds issued pursuant to section 3. The purchase price payable to the state from the sale of the tobacco assets shall be deposited in the state treasury and credited to the state general fund and shall not be subject to the requirements of K.S.A. 38-2101.

Any sale of tobacco assets by the state shall be treated as a true sale and absolute transfer of the property and not as a pledge or other security interest for any borrowing by the state. On and after the effective date of a sale of tobacco assets, the state shall have no right, title or interest in or to such tobacco assets sold, other than a residual or subordinate interest in the tobacco asset or an interest in the enforcement or collection of tobacco asset payments. The tobacco asset payments shall be property of the financing corporation or its transferee or assignee and not of the state. On or before the effective date of any sale of tobacco assets pursuant to an asset sale agreement, the state shall notify the escrow agent under the master settlement agreement of any tobacco assets that have been sold to the financing corporation and irrevocably instruct such escrow agent that the tobacco asset payments are to be paid directly to the financing corporation or its transferee or assignee.

Neither the financing corporation nor its assets or liabilities may be consolidated with those of the Kansas development finance authority (KDFA) or the state. The financing corporation may not dissolve, merge or consolidate with any other entity while any bonds issued pursuant to section 3 or obligations to holders of such bonds are outstanding.

The state pledges and agrees for the benefit of the holders of any bonds issued pursuant to section 3 and the holders or beneficiaries of any other obligations in which the financing corporation has included such pledge and agreement, that the state will: (1) Irrevocably direct the escrow agent under the master settlement agreement to transfer the tobacco asset payments directly to the financing corporation or its transferee or assignee; (2) enforce the rights of the financing 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 pursuant to the terms of the master settlement agreement; (3) not amend the master settlement agreement in any manner

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that would materially impair the rights of the financing corporation or the holders of such bonds or obligations to receive tobacco asset payments necessary to make payment on such bonds or obligations; (4) not limit or alter the rights of the financing corporation to fulfill the terms of its agreements with such holders of such bonds or obligations; (5) not authorize the financing corporation to be a debtor under chapter 9 of the federal bankruptcy code; and (6) not in any way impair the rights and remedies of such holders of such bonds or obligations or the security for such bonds or obligations until such bonds are fully paid and discharged.

The secretary of administration shall obtain the approval of the state finance council prior to executing an asset sale agreement. Approval of the asset sale agreement by the state finance council may be given when the legislature is in session.

The sale of tobacco assets shall be by negotiation approved by the secretary of administration and shall be exempt from competitive bid requirements applicable to the purchase and sale of property by the state.

The district court of Shawnee county shall have exclusive jurisdiction of any suit brought by or against the financing corporation, and process in such suit shall be served on the chairperson of the board of directors of the financing corporation.

Any pledge of tobacco asset payments by the financing corporation shall constitute a continuously perfected security interest in all tobacco asset payments existing on the date of the pledge or arising after the date of the pledge and shall have priority over any other subsequent lien on the tobacco asset payments. The priority of such pledge and security interest shall not be affected by any commingling of tobacco settlement payments with other amounts.

The great plains tobacco settlement financing corporation is created in section 2 as an affiliate of the KDFA and is created for the following purposes: (1) Receive from the state all or a portion of the tobacco assets; (2) transfer, sell, pledge, assign or otherwise convey a portion of such tobacco assets; (3) enter into contracts and establish trusts with any person or entity, including the state, with respect to or regarding all or any portion of the tobacco assets; (4) issue bonds, provide for the security and repayment of such bonds and enter into agreements, contracts or instruments for credit or liquidity enhancement, forward purchase or interest rate swaps or exchanges in connection with such bonds; and (5) issue other obligations secured by a portion of such tobacco assets. Filing of articles of incorporation of the great plains tobacco settlement financing corporation with the secretary of state shall not be required. Each provision of the KDFA act regarding the issuance of bonds or the exercise of any other power or privilege by the authority shall apply to the financing corporation in the exercise of any power, obligation or duty delegated by the authority to such affiliate corporation. The financing corporation shall have the power to contract with the authority to do all things necessary and convenient to carry out the purposes of this act.

Pursuant to section 3, the great plains tobacco settlement financing corporation is authorized and empowered to issue bonds for the purpose of acquiring tobacco assets and for paying expenses of authorizing and issuing the bonds.

Sections 4 through 7 amend the KDFA statutes to: (1) Clarify that acquired property of KDFA may be tangible or intangible; (2) striking the term 'subsidiary' and replacing it with 'affiliate'; (3) clarify that each provision of the KDFA act regarding the issuance of bonds or exercising other power applies to affiliates; (4) filing of articles of incorporation of the Kansas statewide projects development corporation with the secretary of state shall not be required; and (5) authorize KDFA to establish trusts.

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**K.S.A. 38-2101. Kansas endowment for youth fund; tobacco litigation settlement agreement proceeds, disposition; investment, management and administration of fund.** (a) There is hereby established in the state treasury the Kansas endowment for youth fund which shall constitute a trust fund and shall be invested, managed and administered in accordance with the provisions of this act by the board of trustees of the Kansas public employees retirement system established by K.S.A. 74-4905, and amendments thereto.

(b) All of the moneys received by the state pursuant to the tobacco litigation settlement agreements entered into by the attorney general on behalf of the state of Kansas, or pursuant to any judgment rendered, regarding the litigation against tobacco industry companies and related entities, shall be deposited in the state treasury and credited to the Kansas endowment for youth fund. All such moneys shall constitute an endowment which shall remain credited to the Kansas endowment for youth fund except as provided in this section or in K.S.A. 38-2102, and amendments thereto, for transfers to the children's initiatives fund. Expenditures may be made from the Kansas endowment for youth fund for the payment of the operating expenses of the Kansas children's cabinet and the board of trustees, including the expenses of investing and managing the moneys, which are attributable to the Kansas endowment for youth fund. All moneys credited to the Kansas endowment for youth fund shall be invested to provide an ongoing source of investment earnings available for periodic transfer to the children's initiatives fund in accordance with this act. All expenditures from the Kansas endowment for youth fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the board of trustees of the Kansas public employees retirement system or by the chairperson's designee.

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

**K.S.A. 38-2102. Children's initiatives fund; purposes; requirements for funded programs; transfers from Kansas endowment for youth fund, adjustments for increased or reduced tobacco litigation settlement agreement proceeds.** (a) There is hereby established in the state treasury the children's initiatives fund which shall be administered in accordance with this section and the provisions of appropriation acts.

(b) All moneys credited to the children's initiatives fund shall be used for the purposes of providing additional funding for programs, projects, improvements, services and other purposes directly or indirectly beneficial to the physical and mental health, welfare, safety and overall well-being of children in Kansas as provided by appropriation or other acts of the legislature. In allocating or appropriating moneys in the children's initiatives fund, the legislature shall emphasize programs and services that are data-driven and outcomes-based and may emphasize programs and services that are generally directed toward improving the lives of children and youth by combating community-identified risk factors associated with children and youth becoming involved in tobacco, alcohol, drugs or juvenile delinquency. Programs funded must have a clearly articulated objective to be achieved with any funds received. As a condition precedent to funding, every program must demonstrate that the program's design is supported by credible research, that the program as implemented will constitute best practices in the field, that data is available to benchmark the program's desired outcomes and that an evaluation and assessment component is part of the program design and that such evaluation is capable of determining program performance, needed program modifications to enhance performance, ways in which the program could be modified for transfer to other venues, and when performance no longer justifies funding. Community-based programs must demonstrate the availability of sufficient community leadership and the capacity to appropriately implement and administer the program that is funded. Programs which require community mobilization to successfully achieve program objectives must demonstrate a specific strategy to obtain the requisite levels of community mobilization. Moneys allocated or appropriated from the children's initiatives fund shall not be used to replace or substitute for moneys appropriated from the state general fund in the immediately preceding fiscal year.

(c) All expenditures from the children's initiatives fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved in the manner prescribed by law.

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(d) (1) On July 1, 2000, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer, in the following order of priority, (A) first, \$70,740,000 from the Kansas endowment for youth fund to the state general fund and (B) second, \$30,000,000 from the Kansas endowment for youth fund to the children's initiatives fund.

(2) On July 1, 2001, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer \$40,000,000 from the Kansas endowment for youth fund to the children's initiatives fund and shall transfer \$10,000,000 from the Kansas endowment for youth fund to the state general fund.

(3) On July 1, 2002, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer \$45,000,000 from the Kansas endowment for youth fund to the children's initiatives fund.

(4) On July 1 of each fiscal year thereafter, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer from the Kansas endowment for youth fund to the children's initiatives fund the amount equal to 102.5% of the amount transferred from the Kansas endowment for youth fund to the children's initiatives fund pursuant to this section during the immediately preceding fiscal year.

(5) If the amounts to be received during any fiscal year under the tobacco litigation settlement agreements entered into by the attorney general on behalf of the state of Kansas, or pursuant to any judgment rendered, regarding the litigation against tobacco industry companies and related entities, are reduced or increased from the amount that was anticipated to be received for such fiscal year, as of the time the settlement agreements were entered into, then the legislature may adjust the amount otherwise provided by this subsection to be transferred from the Kansas endowment for youth fund to the children's initiatives fund for such fiscal year by including provisions in appropriation acts for such fiscal year that proportionally reduce or increase, as appropriate, the amount otherwise provided by this subsection to be transferred from the Kansas endowment for youth fund to the children's initiatives fund for such fiscal year. In addition, for purposes of circumstances related to the investment of moneys in the Kansas endowment for youth fund or other circumstances or matters deemed sufficient by the legislature, the legislature may adjust the amount otherwise provided by this subsection to be transferred from the Kansas endowment for youth fund to the children's initiatives fund for any fiscal year by including provisions in appropriation acts for such fiscal year that proportionally reduce or increase, as appropriate, the amount otherwise provided by this subsection to be transferred from the Kansas endowment for youth fund to the children's initiatives fund for such fiscal year.

(e) It is the intent of the legislature that, except as provided by this section, no amounts shall be transferred from the Kansas endowment for youth fund to the children's initiatives fund or to any other fund during any state fiscal year.

(f) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the Kansas endowment for youth fund interest earnings based on (1) the average daily balance of moneys in the children's initiatives fund for the preceding month and (2) the net earnings rate of the pooled money investment portfolio for the preceding month.