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CHAPTER 49.

 TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY ACT

**SECTION 11‑49‑10.** Short title.

This chapter may be cited as the “Tobacco Settlement Revenue Management Authority Act”.

**SECTION 11‑49‑20.** Definitions.

As used in this chapter:

(1) “Authority” means the Tobacco Settlement Revenue Management Authority, as established by this chapter.

(2) “Board” means the governing body of the authority.

(3) “Bonds” means special source bonds, notes, or other evidences of indebtedness of the authority payable solely from and secured solely by the State’s tobacco receipts, issued pursuant to the authorizations contained in this chapter and in Article X, Section 13(9) of the Constitution of this State. The bonds are “bonds” for purposes of Section 12‑2‑50 and any successor provision.

(4) “Escrow” means the escrow as that term is defined in the master settlement agreement.

(5) “Escrow agent” means the escrow agent as that term is defined in the master settlement agreement.

(6) “Independent auditor” means the independent auditor as that term is defined in the master settlement agreement.

(7) “Master settlement agreement” means the settlement agreement and related documents entered into on November 23, 1998, by the State and the four principal United States tobacco product manufacturers, as amended and supplemented.

(8) “Participating manufacturers” means the participating manufacturers as that term is defined in the master settlement agreement.

(9) “State” or “this State” means the State of South Carolina.

(10) “State’s tobacco receipts” means all of the payments to be made by the escrow agent and derived from payments made by the participating manufacturers and allocated to this State under the master settlement agreement, other than pursuant to Article XVII of that agreement.

**SECTION 11‑49‑30.** Tobacco Settlement Revenue Management Authority created; purpose; termination.

(A) There is created the Tobacco Settlement Revenue Management Authority, a public body corporate and politic and an instrumentality of this State, with the responsibility of effecting the public purpose of this chapter.

(B) The purpose of the authority is to receive all of the state’s tobacco receipts, to issue bonds of the authority payable solely from and secured solely by the state’s tobacco receipts or any tobacco receipts reserved fund created from it for the purposes authorized in this chapter, and to manage and dispose of the state’s tobacco receipts for the purposes and in the manner authorized in this chapter.

(C) Upon termination of the existence of the authority, title to all property, real and personal, owned by it, including net earnings, vests in the State.

**SECTION 11‑49‑40.** Board; members; compensation; ethics; administrative assistance; personnel.

(A) The authority is governed by a board, which shall consist of five members as follows: the Governor or his designee, the State Treasurer, the Comptroller General, the Chairman of the Senate Finance Committee, and the Chairman of the House Ways and Means Committee. The Governor shall serve as chairman; and in the absence of the Governor, meetings must be chaired by the State Treasurer. All members serve ex officio.

(B) Members of the board serve without pay but are allowed the usual mileage, per diem, and subsistence as provided by law for members of State boards, committees, and commissions.

(C) Members of the board and its employees, if any, are subject to the provisions of Chapter 13, Title 8, the Ethics, Government Accountability, and Campaign Reform Act, and Chapter 17 of Title 2, relating to lobbying.

(D) To the extent that administrative assistance is needed for the functions and operations of the authority, the board may obtain this assistance from the Office of the State Treasurer and the State Budget and Control Board, and any successor agency, office or division, each of which must provide the assistance requested by the board at no cost to the board or to the authority other than for expenses incurred and paid to entities that are not agencies or departments of the State. The board must retain ultimate responsibility and provide proper oversight for the implementation of this chapter.

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

**SECTION 11‑49‑50.** Tobacco receipts; assignment to authority.

The State’s tobacco receipts due to the State after June 30, 2001, and the right to receive them as they are distributed from the escrow are assigned to the authority. On and after the date these revenues are pledged, the State shall have no right, title, or interest in or to the state’s tobacco receipts; and the state’s tobacco receipts are property of the authority and not of the State, and must be owned, received, held, and disbursed by the authority or the trustee for the holders of bonds and not by the State. The State directs the independent auditor and the escrow agent to make all these payments to the authority in accordance with instructions that may be given by the authority from time to time. The assignment and direction made in this subsection are irrevocable during any time when bonds are outstanding under this chapter plus one year and one day thereafter and are a part of the contractual obligation owed to the bond holders. On or before the date of delivery of any bonds, the State through the State Treasurer shall notify the independent auditor and the escrow agent that the State’s tobacco receipts have been assigned to the authority and shall instruct the independent auditor and the escrow agent that, subsequent to the delivery date for bonds and irrevocably during the time when any bonds are outstanding, the State’s tobacco receipts are to be paid directly to the authority or its designee.

**SECTION 11‑49‑60.** Powers of board to operate and administer authority.

In addition to the powers contained elsewhere in this chapter, the board has all power necessary, useful, or appropriate to operate and administer the authority, to effectuate the purposes of the authority, and to perform its other functions including, but not limited to, the power to:

(1) have perpetual succession;

(2) sue and be sued in its own name;

(3) adopt, promulgate, amend, and repeal bylaws, not inconsistent with provisions in this chapter for the administration of the authority’s affairs and the implementation of its functions;

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

(5) enter into contracts, arrangements, and agreements with government units and other persons and execute and deliver all financing agreements, including bonds issued to support the borrowing by such government units to pay eligible costs of qualified projects, and other instruments necessary or convenient to the exercise of the powers granted in this chapter;

(6) enter into agreements with a department, agency, political subdivision or instrumentality of the United States or of this State or of another State for the purpose of planning and providing for the financing of qualified projects or for the administration of the purposes and programs of this chapter;

(7) enter into agreements with the tobacco trust fund for the purpose of managing and controlling the transfer of funds between the authority and the tobacco trust fund and governing the investment and the monitoring and recordkeeping of these funds, for purposes of maintaining the exemption from federal income tax of interest on bonds and for other purposes;

(8) enter into, amend, and terminate agreements in the nature of interest rate swaps, forward security supply contracts, agreements for the management of interest rate risks, agreements for the management of cash flow, and other agreements of a similar nature, with respect to bonds issued pursuant to this chapter;

(9) procure insurance, guarantees, letters of credit, and other forms of collateral or security or credit support from any public or private entity, including any department, agency, or instrumentality of the United States or this State, for the payment of any bonds, including the power to pay premiums or fees on any insurance, guarantees, letters of credit, and other forms of collateral or security or credit support;

(10) borrow money through the issuance of bonds as provided in this chapter, and through the issuance of notes in anticipation of the issuance of these bonds;

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

(12) in order to pay budgeted items pursuant to a budget adopted in accordance with Section 11‑49‑100, to expend funds for the costs of administering the operations of the authority;

(13) direct the escrow agent with respect to the disbursement to the authority of the State’s tobacco receipts and receive and accept the State’s tobacco receipts;

(14) enter into contracts or agreements necessary, proper, or convenient for the effectuation of the powers and purposes of the board and the authority;

(15) invest funds held by the authority under this chapter in any investment permitted for funds of this State, other than the State’s retirement funds, or for funds of the political subdivisions of this State, in revenue bonds of government units, and in general obligations of other States whose general obligation debt is rated not lower than the general obligation debt of this State;

(16) direct the Attorney General of this State to enforce in the name of the State of South Carolina, and if permissible to enforce directly through its own attorneys in the name of the State, the Master Settlement Agreement. This power is a part of the contractual obligation owed to the holders of any bonds; and

(17) do all other things necessary or convenient to exercise powers granted or reasonably implied by this chapter or that may be necessary for the furtherance and accomplishments of the purposes of the authority.

Before the date which is one year and one day after which the authority no longer has any bonds outstanding, the authority has no authority to file a voluntary petition under Chapter 9 of the United States Bankruptcy Code or corresponding chapters or sections as may, from time to time, be in effect, and neither any public officer or any organization, entity, or other person shall authorize the authority to be or become a debtor under Chapter 9 or any successor or corresponding chapter or sections during the periods. The provisions of this paragraph are for the benefit of the holders of any bonds and are a part of the contractual obligation owed to such bondholders, and the State shall not modify or delete the provisions of this paragraph during the periods described in this chapter.

In the exercise of its powers in this chapter, the board and the authority may obtain services in accordance with the procedures, guidelines, and criteria established by the board for that purpose and are not restricted by Chapter 35 of Title 11 or any successor provision.

**SECTION 11‑49‑70.** Bonds.

(A) The board may issue bonds in the name of the authority, from time to time, for the purposes and in the manner Stated in this section.

(B) All bonds must be secured solely by and payable solely from the State’s tobacco receipts, or the portion of the state’s tobacco receipts the board determines to pledge for payment.

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

(D) The board has no power to pledge the faith, credit, or taxing power of this State or any of its political subdivisions in connection with the issuance of the bonds, and each bond must recite on its face that it is a special source bond of the authority issued pursuant to and in accordance with this chapter and Article X, Section 13(9) of the Constitution of this State, that it is secured solely by and payable solely from the State’s tobacco receipts, that it is neither a general, legal, nor moral obligation of the State or any of its political subdivisions, and that it is not backed by the full faith, credit, or taxing power of this State or any of its political subdivisions. Failure to include this language on the face of any bond does not cause the bond to become a general, legal or moral obligation of the State or any of its political subdivisions, or a pledge of the full faith, credit, or taxing power of this State or any of its political subdivisions.

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

(F) The authority may not issue any bond with a scheduled maturity later than thirty years after the date of issuance.

(G) When issuing bonds for the purpose described in subsection (J)(2) of this section or to refund the bonds, the authority may sell bonds either in a negotiated transaction with one or more lead underwriters selected by the board on the basis of criteria to be established by the board, or through a competitive bidding process in accordance with procedures to be established by the board. The determination of whether to sell bonds through negotiation or through competitive bidding must be made by the board.

(H) The authority may not issue any bonds unless the board has first adopted its resolution authorizing the issuance, finding that the issuance and the proposed use of the bond proceeds is in accordance with this chapter, and setting out the terms and conditions of the bonds and the covenants of the authority with respect to the bonds. These terms must include the issuance date or dates, the maturity date or dates, the principal amount, the interest rates or the means of determining the same, whether fixed or variable, the time, manner, and currency for paying interest and principal, the negotiability of the bonds and any restrictions relating to the registration of the bonds; and the covenants may include, without limitation, the establishment and maintenance of dedicated reserve funds for the payment of debt service on bonds if the State’s tobacco receipts are inadequate in any year, restrictions on the later issuance of additional bonds or making the later issuance subject to certain conditions relating to available debt service coverage or otherwise, conditions on the timing of the release of all or a portion of the State’s tobacco receipts to the general fund of this State, the enforcement of the master settlement agreement, or any other matter that the board considers appropriate, subject to subsection (I) of this section.

(I) The board may not authorize or cause the authority to enter into any covenant that purports to create a general, legal or moral obligation of this State or any of its political subdivisions or to pledge the full faith, credit, or taxing power of the State or any of its political subdivisions; nor may the board authorize or cause the authority to enter into any covenants that purport to create a right on the part of the board, the authority, any bondholder, or any trustee any right to recover funds consisting of the State’s tobacco receipts once those funds have been deposited into the general fund of the State in accordance with the terms of this chapter. Any covenant in violation of this subsection is void and of no effect.

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

(1) refunding, on a current or advance‑refunding basis, any outstanding bonds of the authority; or

(2) obtaining funds for delivery to the funds as provided in Section 11‑11‑170.

All proceeds of bonds issued for the purpose described in item (2) of this subsection must be delivered promptly to the respective fund, except as needed to defray the costs of issuance of the bonds or to establish any required reserve fund for the bonds.

The bonds and the issuance of the bonds are subject to the provisions of Sections 11‑15‑20 and 11‑15‑30 and any successor provisions.

**SECTION 11‑49‑80.** Board and authority assets limited to tobacco receipts.

The authority and the board shall have no other assets or property except the State’s tobacco receipts as received, and the right to receive the State’s tobacco receipts.

**SECTION 11‑49‑90.** Power to incur debt.

The authority and the board have no power to incur debt or obligations or in any way to encumber their assets except by the issuance of bonds, including the making of covenants in relation to the issuing of bonds and notes in anticipation of the issuance of the bonds, and the incurring of expenses and obligations as authorized in Section 11‑49‑60.

**SECTION 11‑49‑100.** Accounts to be maintained separately; annual report.

All accounts of the authority must be held and maintained separately from all other funds, properties, assets, and accounts of this State and its other agencies. The board shall keep an accurate account of all of its activities and all of its receipts and expenditures and annually, in the month of January, shall make a report of its activities to the State Budget and Control Board, the report to be in a form prescribed by the State Budget and Control Board. Audited financial statements must be submitted to the Comptroller General by October fifteenth following the end of the fiscal year.

**SECTION 11‑49‑110.** [Reserved].

**SECTION 11‑49‑120.** Taxation of bonds, interest from bonds, and property of authority; fiduciaries authorized to invest in bonds.

(A) The bonds and the income from the bonds are exempt from all taxation in the State except for inheritance, estate, or transfer taxes, regardless of the federal income tax treatment of the interest from the bonds.

(B) The exercise of the powers granted by this chapter are in all respects for the benefit of the citizens of the State and for the promotion of their welfare, convenience, and prosperity. Property, whether real or personal, tangible or intangible, of the authority and the income and operations of the authority are exempt from taxation or assessment by the State or any of its political subdivisions.

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

**SECTION 11‑49‑130.** Excess tobacco receipts.

All of the state’s tobacco receipts not needed to pay (1) expenses of the authority during the next twelve months, or (2) debt service on bonds during the next twelve months, or fully to fund reserve accounts established by the board with respect to bonds, not less frequently than annually and at a time determined by the board in its resolutions authorizing the issuance of bonds, must be transferred to the funds as identified in Section 11‑11‑170. The determination by the board of the amount to be transferred is final and is not reviewable by any court or other body.

**SECTION 11‑49‑140.** Exemption from provisions of Title 1, Chapter 23.

Notwithstanding any other provision of law, the provisions of Chapter 23 of Title 1, do not apply to the actions of the board and the authority.

**SECTION 11‑49‑150.** Consent to and approval of master settlement agreement; modification.

The General Assembly consents to and approves the Master Settlement Agreement on behalf of this State and all of its agencies, departments, offices, political subdivisions, and other instrumentalities and bodies politic; and no such agencies, departments, offices, political subdivisions, and other instrumentalities or bodies politic of the State shall have any power or authority to bring suit against the participating manufacturers for claims in the nature of those settled by the Master Settlement Agreement. At any time when bonds are outstanding and for one year and one day thereafter, the State must not agree to the amendment of the Master Settlement Agreement without the approval of the authority; during that period, the authority may approve on behalf of the State amendments to the Master Settlement Agreement if such amendments do not diminish the rights and remedies of the authority or the holders or any outstanding bonds. This restriction on amendment of the Master Settlement Agreement is a part of the covenant with the bondholders.

**SECTION 11‑49‑160.** Right of authority to fulfill agreements with bond holders protected.

The State pledges and agrees with the authority, and the holders of the bonds in which the authority has included such pledge and agreement, that the State shall not limit or alter the rights of the authority to fulfill the terms of its agreements with such holders, and shall not in any way impair the rights and remedies of such holders or the security for such bonds until the bonds, together with the interest on them and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged.

**SECTION 11‑49‑170.** Chapter to be liberally construed.

This act and all powers granted by this chapter must be liberally construed to effectuate its intent and their purposes, without implied limitations on them. This chapter constitutes full and complete authority for all things herein contemplated to be done. All rights and powers granted in this chapter shall be as cumulative with those derived form other sources and shall not, except as expressly stated in this chapter, be construed in limitation thereof. Insofar as the provisions of this chapter are inconsistent with the provisions of any other act, general or special, the provisions of this chapter are controlling. If any clause, sentence, paragraph, section, or part of this chapter be adjudged by any court of competent jurisdiction to be invalid, this judgment shall not affect, impair, or invalidate the remainder of this chapter but is confined in its operation to the clause, sentence, paragraph, section, or part of the chapter directly involved in the controversy in which the judgment shall have been rendered.