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SENATE BILL 6632

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State of Washington                      62nd Legislature                      2012 1st Special Session

By Senators Keiser, Frockt, Kline, and Chase

Read first time 03/23/12. Referred to Committee on Ways & Means.

1            AN ACT Relating to the disposition of the state's revenues from the  
2 tobacco litigation national master settlement agreement; amending RCW  
3 43.79.487; reenacting and amending RCW 74.09.035; adding new sections  
4 to chapter 43.340 RCW; and providing for submission of this act to a  
5 vote of the people.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            NEW SECTION.    **Sec. 1.**    LEGISLATIVE DECLARATION.    The legislature  
8 declares it to be the public policy of the state and a recognized  
9 governmental function to assist in securitizing the revenue stream from  
10 the master settlement agreement between the state and tobacco product  
11 manufacturers in order to provide a source of revenue for the state and  
12 federal basic health plan and other medical care services.    The purpose  
13 of this subchapter is to issue nonrecourse revenue bonds to make funds  
14 available for these medical care services as a bridge to full  
15 implementation of the federal affordable care act in 2014.    This  
16 subchapter, being necessary for the welfare of the state and its  
17 inhabitants, shall be liberally construed to effect the purposes  
18 thereof.

1           NEW SECTION.   **Sec. 2.**   DEFINITIONS.   The definitions in this  
2 section apply throughout this subchapter unless the context clearly  
3 requires otherwise.

4           (1) "Authority" means the tobacco settlement authority created in  
5 this chapter.

6           (2) "Board" means the governing board of the authority.

7           (3) "Bonds" means bonds, notes, and other obligations and financing  
8 arrangements issued or entered into by the authority under this  
9 subchapter.

10          (4) "Master settlement agreement" means the national master  
11 settlement agreement and related documents entered into on November 23,  
12 1998, by the state and the four principal United States tobacco product  
13 manufacturers, as amended and supplemented, for the settlement of  
14 litigation brought by the state against the tobacco product  
15 manufacturers.

16          (5) "Sales agreement" means any agreement authorized under this  
17 subchapter in which the state provides for the sale to the authority of  
18 a portion of the payments required to be made by tobacco product  
19 manufacturers to the state and the state's rights to receive such  
20 payments, pursuant to the master settlement agreement.

21           NEW SECTION.   **Sec. 3.**   BONDS NOT DEBT OF STATE.   (1) Bonds issued  
22 under this subchapter shall be issued in the name of the authority.  
23 The bonds shall not be obligations of the state of Washington and shall  
24 be obligations only of the authority, payable solely from the special  
25 fund or funds created by the authority for their payment.

26          (2) Bonds issued under this subchapter shall contain a recital on  
27 their face to the effect that payment of the principal of, interest on,  
28 and prepayment premium, if any, on the bonds shall be a valid claim  
29 only as against the special fund or funds relating thereto, that  
30 neither the faith and credit nor the taxing power of the state or any  
31 municipal corporation, subdivision, or agency of the state, other than  
32 the authority as set forth in this chapter, is pledged to the payment  
33 of the principal of, interest on, and prepayment premium, if any, on  
34 the bonds.

35          (3) Contracts entered into by the authority shall be entered into  
36 in the name of the authority and not in the name of the state of

1 Washington. The obligations of the authority under the contracts shall  
2 be obligations only of the authority and are not in any way obligations  
3 of the state of Washington.

4 NEW SECTION. **Sec. 4.** FINANCING POWERS. In addition to other  
5 powers and duties prescribed in this chapter, the authority is  
6 empowered to:

7 (1) Establish a stable source of revenue to be used for the  
8 purposes designated in this subchapter;

9 (2) Enter into sales agreements with the state for purchase of a  
10 portion of the amounts otherwise due to the state under the master  
11 settlement agreement, and of the state's rights to receive such  
12 amounts;

13 (3) Issue bonds, the interest and gain on which may or may not be  
14 exempt from general federal income taxation, in one or more series, and  
15 to refund or refinance its debt and obligations;

16 (4) Sell, pledge, or assign, as security, all or a portion of the  
17 revenues derived by the authority under any sales agreement, to provide  
18 for and secure the issuance of its bonds;

19 (5) Provide for the investment of any funds, including funds held  
20 in reserve, not required for immediate disbursement, and provide for  
21 the selection of investments;

22 (6) Manage its funds, obligations, and investments as necessary and  
23 as consistent with its purpose; and

24 (7) Implement the purposes of this subchapter.

25 NEW SECTION. **Sec. 5.** GENERAL POWERS--RESTRICTIONS. (1) The  
26 authority has all the general powers necessary to carry out its  
27 purposes and duties and to exercise its specific powers under this  
28 subchapter. In addition to other powers specified in this subchapter,  
29 the authority may:

30 (a) Sue and be sued in its own name;

31 (b) Make and execute agreements, contracts, and other instruments,  
32 with any public or private person, in accordance with this subchapter;

33 (c) Employ, contract with, or engage independent counsel, bond  
34 counsel, other attorneys, financial advisors, investment bankers,  
35 auditors, other technical or professional assistants, and such other

1 personnel as are necessary and recommended by the state housing finance  
2 commission staff;

3 (d) Invest or deposit moneys of the authority in any manner  
4 determined by the authority and enter into hedge agreements, swap  
5 agreements, or other financial products, including payment agreements  
6 defined under RCW 39.96.020(5). The authority is not a governmental  
7 entity for purposes of chapter 39.96 RCW;

8 (e) Establish such special funds, and controls on deposits to and  
9 disbursements from them, as it finds convenient for the implementation  
10 of this subchapter;

11 (f) Procure insurance, other credit enhancements, and other  
12 financing arrangements for its bonds to fulfill its purposes under this  
13 subchapter, including but not limited to municipal bond insurance and  
14 letters of credit;

15 (g) Accept appropriations, gifts, grants, loans, or other aid from  
16 public or private entities;

17 (h) Adopt rules, consistent with this subchapter, as the board  
18 determines necessary;

19 (i) Delegate any of its powers and duties if consistent with the  
20 purposes of this subchapter; and

21 (j) Exercise any other power reasonably required to implement the  
22 purposes of this subchapter.

23 (2) The authority does not have the power of eminent domain and  
24 does not have the power to levy taxes of any kind.

25 NEW SECTION. **Sec. 6.** AUTHORIZATION OF THE SALE OF RIGHTS IN THE  
26 MASTER SETTLEMENT AGREEMENT. (1) The governor is authorized to sell  
27 and assign to the authority all of the state's right to receive a  
28 portion of the state's annual share of the revenue derived from the  
29 master settlement agreement for litigation brought by the state against  
30 tobacco product manufacturers. The portion of the state's share sold  
31 and assigned shall be determined by the governor in an amount necessary  
32 to generate net proceeds to the state for deposit to the basic health  
33 plan stabilization account under RCW 43.79.487 up to three hundred  
34 fifty million dollars. The attorney general shall assist the governor  
35 in the review of all necessary documentation to effect the sale. The  
36 governor and the authority are authorized to take any action necessary  
37 to facilitate and complete the sale.

1 (2) The sale made under this section is irrevocable so long as  
2 bonds issued under this subchapter remain outstanding. The portion of  
3 the revenue sold to the authority shall be pledged to the bondholders.  
4 The sale and assignment shall constitute and be treated as a true sale  
5 and absolute transfer of the revenue so transferred and not as a pledge  
6 or other security interest granted by the state for any borrowing. The  
7 characterization of such a sale as an absolute transfer shall not be  
8 negated or adversely affected by the fact that only a portion of the  
9 revenue from the master settlement agreement is being sold and  
10 assigned, or by the state's acquisition or retention of an ownership  
11 interest in the portion of the revenue from the master settlement  
12 agreement not so assigned.

13 (3) In addition to such other terms, provisions, and conditions as  
14 the governor and the authority may determine appropriate for inclusion  
15 in the sale agreements, the sale agreements shall contain (a) a  
16 covenant of the state that the state will not agree to any amendment of  
17 the master settlement agreement that materially and adversely affects  
18 the authority's ability to receive the portion of the state's share of  
19 master settlement agreement payments that have been sold to the  
20 authority; (b) a requirement that the state enforce, at its own  
21 expense, the provisions of the master settlement agreement that require  
22 the payment of the portion of the state's share of master settlement  
23 agreement payments that have been sold to the authority; and (c) a  
24 covenant that the state shall take no action that would adversely  
25 affect the tax-exempt status of any tax-exempt bonds of the authority.

26 (4) On or after the effective date of the sale, the state shall not  
27 have any right, title, or interest in the portion of the state's share  
28 of the master settlement agreement revenue sold and such portion shall  
29 be the property of the authority and not the state, and shall be owned,  
30 received, held, and disbursed by the authority or its trustee or  
31 assignee, and not the state.

32 (5) The terms of the state's sale to the authority of a portion of  
33 the master settlement agreement revenue shall provide that the portion  
34 shall be paid directly to the authority or its trustee or assignee.  
35 The revenue sold and assigned shall not be received in the treasury of  
36 the state and shall not be or deemed to be general state revenues as  
37 that term is used in Article VIII, section 1 of the state Constitution.

1        NEW SECTION.    **Sec. 7.**    BONDS.

2        (1) The authority may issue its  
3        bonds in principal amounts which, in the opinion of the authority, are  
4        necessary to provide sufficient funds for achievement of its purposes  
5        under this subchapter, the payment of debt service on its bonds, the  
6        establishment of reserves to secure the bonds, the costs of issuance of  
7        its bonds and credit enhancements, if any, and all other expenditures  
8        of the authority incident to and necessary to carry out its purposes or  
9        powers. The authority may also issue refunding bonds, including  
10       advance refunding bonds, for the purpose of refunding previously issued  
11       bonds, and may issue other types of bonds, debt obligations, and  
12       financing arrangements necessary to fulfill its purposes or the  
13       purposes of this subchapter. The bonds are investment securities and  
14       negotiable instruments within the meaning of and for the purposes of  
15       the uniform commercial code.

16       (2) The authority's bonds shall bear such date or dates, mature at  
17       such time or times, be in such denominations, be in such form, be  
18       registered or registrable in such manner, be made transferable,  
19       exchangeable, and interchangeable, be payable in such medium of  
20       payment, at such place or places, be subject to such terms of  
21       redemption, bear such fixed or variable rate or rates of interest, be  
22       taxable or tax exempt, be payable at such time or times, and be sold in  
23       such manner and at such price or prices, as the authority determines.  
24       The bonds shall be executed by one or more officers of the authority,  
25       and by the trustee or paying agent if the authority determines to use  
26       a trustee or paying agent for the bonds. Execution of the bonds may be  
27       by manual or facsimile signature, provided that at least one signature  
28       on the bond is manual.

29       (3) The bonds of the authority shall be subject to such terms,  
30       conditions, covenants, and protective provisions as are found necessary  
31       or desirable by the authority, including, but not limited to, pledges  
32       of the authority's assets, setting aside of reserves, and other  
33       provisions the authority finds are necessary or desirable for the  
34       security of bondholders.

35       (4) Any revenue pledged by the authority to be received under the  
36       sales agreement or in special funds created by the authority shall be  
37       valid and binding at the time the pledge is made. Receipts so pledged  
38       and then or thereafter received by the authority and any securities in  
39       which such receipts may be invested shall immediately be subject to the

1 lien of such pledge without any physical delivery thereof or further  
2 act. The lien of any such pledge shall be valid and binding as against  
3 all parties having claims of any kind against the authority, whether  
4 such parties have notice of the lien. Notwithstanding any other  
5 provision to the contrary, the resolution or indenture of the authority  
6 or any other instrument by which a pledge is created need not be  
7 recorded or filed pursuant to chapter 62A.9A RCW to perfect such  
8 pledge. The authority shall constitute a governmental unit within the  
9 meaning of RCW 62A.9A-102(a)(45).

10 (5) When issuing bonds, the authority may provide for the future  
11 issuance of additional bonds or parity debt on a parity with  
12 outstanding bonds, and the terms and conditions of their issuance. The  
13 authority may issue refunding bonds in accordance with chapter 39.53  
14 RCW or issue bonds with a subordinate lien against the fund or funds  
15 securing outstanding bonds.

16 (6) The board and any person executing the bonds are not liable  
17 personally on the indebtedness or subject to any personal liability or  
18 accountability by reason of the issuance thereof.

19 (7) The authority may, out of any fund available therefor, purchase  
20 its bonds in the open market.

21 NEW SECTION. **Sec. 8.** LEGAL INVESTMENTS. Bonds issued under this  
22 subchapter are hereby made securities in which all insurance companies,  
23 trust companies in their commercial departments, savings banks,  
24 cooperative banks, banking associations, investment companies,  
25 executors, trustees and other fiduciaries, and all other persons  
26 whatsoever who are now or may hereafter be authorized to invest in  
27 obligations of the state may properly and legally invest funds,  
28 including capital in their control or belonging to them.

29 NEW SECTION. **Sec. 9.** LIMITATION OF LIABILITY. Members of the  
30 board and persons acting in the authority's behalf, while acting within  
31 the scope of their employment or agency, are not subject to personal  
32 liability resulting from carrying out the powers and duties conferred  
33 on them under this subchapter.

34 NEW SECTION. **Sec. 10.** BANKRUPTCY. Prior to the date that is  
35 three hundred sixty-six days after which the authority no longer has

1 any bonds outstanding, the authority is prohibited from filing a  
2 voluntary petition under chapter 9 of the federal bankruptcy code or  
3 such corresponding chapter or section as may, from time to time, be in  
4 effect, and a public official or organization, entity, or other person  
5 shall not authorize the authority to be or become a debtor under  
6 chapter 9 or any successor or corresponding chapter or sections during  
7 such periods. This section shall be part of any contractual obligation  
8 owed to the holders of bonds issued under this subchapter. Any such  
9 contractual obligation shall not subsequently be modified by state law  
10 during the period of the contractual obligation.

11 NEW SECTION. **Sec. 11.** DISSOLUTION OF THE AUTHORITY. The  
12 authority shall dissolve no later than two years from the date of final  
13 payment of all of its outstanding bonds and the satisfaction of all  
14 outstanding obligations of the authority, except to the extent  
15 necessary to remain in existence to fulfill any outstanding covenants  
16 or provisions with bondholders or third parties made in accordance with  
17 this subchapter. Upon dissolution of the authority, all assets of the  
18 authority shall be returned to the state and shall be deposited in the  
19 state general fund, and the authority shall execute any necessary  
20 assignments or instruments, including any assignment of any right,  
21 title, or ownership to the state for receipt of payments under the  
22 master settlement agreement.

23 **Sec. 12.** RCW 43.79.487 and 2011 c 5 s 711 are each amended to read  
24 as follows:

25 The basic health plan stabilization account is created in the state  
26 treasury, to consist of such revenues, appropriations, and transfers as  
27 may be directed by law. Moneys in the account may be spent only after  
28 appropriation. Expenditures from the account may be used solely for  
29 the support of the basic health plan under chapter 70.47 RCW and  
30 medical care services under RCW 74.09.035(1) (a) and (c).

31 **Sec. 13.** RCW 74.09.035 and 2011 1st sp.s. c 36 s 6 and 2011 1st  
32 sp.s. c 15 s 3 are each reenacted and amended to read as follows:

33 (1) To the extent of available funds, medical care services may be  
34 provided to:

35 (a) Persons who:



1 (i) Are incapacitated from gainful employment by reason of bodily  
2 or mental infirmity that will likely continue for a minimum of ninety  
3 days as determined by the ((department)) authority. The standard for  
4 incapacity in this subsection, as evidenced by the ninety-day duration  
5 standard, is not intended to be as stringent as federal supplemental  
6 security income disability standards;

7 (ii) Are citizens or aliens lawfully admitted for permanent  
8 residence or otherwise residing in the United States under color of  
9 law;

10 (iii) Have furnished the ((department)) authority their social  
11 security number. If the social security number cannot be furnished  
12 because it has not been issued or is not known, an application for a  
13 number shall be made prior to authorization of benefits, and the social  
14 security number shall be provided to the ((department)) authority upon  
15 receipt;

16 (iv) Have countable income as described in RCW 74.04.005 at or  
17 below four hundred twenty-eight dollars for a married couple or at or  
18 below three hundred thirty-nine dollars for a single individual; and

19 (v) Do not have countable resources in excess of those described in  
20 RCW 74.04.005.

21 (b) Persons eligible for the aged, blind, or disabled assistance  
22 program authorized in RCW 74.62.030 and who are not eligible for  
23 medicaid under RCW 74.09.510.

24 (c) Persons eligible for alcohol and drug addiction services  
25 provided under chapter 74.50 RCW, in accordance with medical  
26 eligibility requirements established by the ((department)) authority.

27 (d) The following persons are not eligible for medical care  
28 services:

29 (i) Persons who are unemployable due primarily to alcohol or drug  
30 addiction, except as provided in (c) of this subsection. These persons  
31 shall be referred to appropriate assessment, treatment, shelter, or  
32 supplemental security income referral services as authorized under  
33 chapter 74.50 RCW. Referrals shall be made at the time of application  
34 or at the time of eligibility review. This subsection shall not be  
35 construed to prohibit the ((department)) authority from granting  
36 medical care services benefits to alcoholics and drug addicts who are  
37 incapacitated due to other physical or mental conditions that meet the  
38 eligibility criteria for medical care services;

1 (ii) Persons who refuse or fail to cooperate in obtaining federal  
2 aid assistance, without good cause;

3 (iii) Persons who refuse or fail without good cause to participate  
4 in drug or alcohol treatment if an assessment by a certified chemical  
5 dependency counselor indicates a need for such treatment. Good cause  
6 must be found to exist when a person's physical or mental condition, as  
7 determined by the ((department)) authority, prevents the person from  
8 participating in drug or alcohol dependency treatment, when needed  
9 outpatient drug or alcohol treatment is not available to the person in  
10 the county of his or her residence or when needed inpatient treatment  
11 is not available in a location that is reasonably accessible for the  
12 person; and

13 (iv) Persons who are fleeing to avoid prosecution of, or to avoid  
14 custody or confinement for conviction of, a felony, or an attempt to  
15 commit a felony, under the laws of the state of Washington or the place  
16 from which the person flees; or who are violating a condition of  
17 probation, community supervision, or parole imposed under federal or  
18 state law for a felony or gross misdemeanor conviction.

19 (e) For purposes of determining whether a person is incapacitated  
20 from gainful employment under (a) of this subsection:

21 (i) The ((department)) authority shall adopt by rule medical  
22 criteria for incapacity determinations to ensure that eligibility  
23 decisions are consistent with statutory requirements and are based on  
24 clear, objective medical information; and

25 (ii) The process implementing the medical criteria shall involve  
26 consideration of opinions of the treating or consulting physicians or  
27 health care professionals regarding incapacity, and any eligibility  
28 decision which rejects uncontroverted medical opinion must set forth  
29 clear and convincing reasons for doing so.

30 (f) For purposes of reviewing a person's continuing eligibility and  
31 in order to remain eligible for the program, persons who have been  
32 found to have an incapacity from gainful employment must demonstrate  
33 that there has been no material improvement in their medical or mental  
34 health condition. The ((department)) authority may discontinue  
35 benefits when there was specific error in the prior determination that  
36 found the person eligible by reason of incapacitation.

37 (2) Enrollment in medical care services may not result in  
38 expenditures that exceed the amount that has been appropriated in the

1 operating budget. If it appears that continued enrollment will result  
2 in expenditures exceeding the appropriated level for a particular  
3 fiscal year, the ((department)) authority may freeze new enrollment and  
4 establish a waiting list of persons who may receive benefits only when  
5 sufficient funds are available.

6 (3) Determination of the amount, scope, and duration of medical  
7 care services shall be limited to coverage as defined by the authority,  
8 except that adult dental, and routine foot care shall not be included  
9 unless there is a specific appropriation for these services.

10 (4) The authority shall enter into performance-based contracts with  
11 one or more managed health care systems for the provision of medical  
12 care services under this section. The contract must provide for  
13 integrated delivery of medical and mental health services.

14 (5) The authority shall establish standards of assistance and  
15 resource and income exemptions, which may include deductibles and co-  
16 insurance provisions. In addition, the authority may include a  
17 prohibition against the voluntary assignment of property or cash for  
18 the purpose of qualifying for assistance.

19 (6) Residents of skilled nursing homes, intermediate care  
20 facilities, and intermediate care facilities for persons with  
21 intellectual disabilities, as that term is described by federal law,  
22 who are eligible for medical care services shall be provided medical  
23 services to the same extent as provided to those persons eligible under  
24 the medical assistance program.

25 (7) Eligibility for medical care services shall commence with the  
26 date of certification for medical care services, date of eligibility  
27 for the aged, blind, or disabled assistance program provided under RCW  
28 74.62.030, or the date of eligibility for alcohol and drug addiction  
29 services provided under chapter 74.50 RCW.

30 NEW SECTION. **Sec. 14.** CODIFICATION. Sections 1 through 11 of  
31 this act shall be added as a new subchapter in chapter 43.340 RCW.

32 NEW SECTION. **Sec. 15.** SEVERABILITY. If any provision of this act  
33 or its application to any person or circumstance is held invalid, the  
34 remainder of the act or the application of the provision to other  
35 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 16.**    REFERENDUM.    The secretary of state shall  
2    submit this act to the people for their adoption and ratification, or  
3    rejection, at the next general election to be held in this state, in  
4    accordance with Article II, section 1 of the state Constitution and the  
5    laws adopted to facilitate its operation.

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