



SB 04-203: Tobacco Securitization

Ten Reasons Why Securitization as Proposed Should be Defeated

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1. Securitization will permanently divert funds from health care programs.

The Tobacco Master Settlement Agreement was entered into on the basis that States and their health care providers will be facing higher health care costs in the future for smokers than they would have had those persons never smoked. The settlement monies should be and largely were dedicated to health care and tobacco cessation and prevention groups. After securitization, the lower amount of funds which will be realized may be used for any purpose—highways, capital construction needs, etc. If securitization is defeated, the \$80 to \$100 million expected to be received each year for the foreseeable future will be more likely to go into health care as originally intended.

2. Securitization will not resolve the structural deficit.

Legislative Council has estimated there will be a “budget gap” or structural deficit of over \$400 million in the next three fiscal years. Securitization is being proposed as a way to fill that gap. However, the proceeds are one-time in nature while the structural deficit is on going.

3. There should be limits on the amount to be securitized if at all.

There are no limits in the bill on how much of the settlement proceeds may be securitized. There should be limits, since there is no dispute that the funds to be securitized will have to be heavily discounted to be sold. Selling more than necessary only increases the shortfall compared to what can be achieved financially without securitization.

4. The State may get a very bad deal financially.

There is no lower limit specified in the bill on the percentage of funds to be realized for any funds to be securitized. In other states, it is believed 50 or 60 cents on the dollar has been realized. There is no requirement or floor here—thus 40 or 30 cents on the dollar only may be realized. There should be a lower limit on what the deal should yield for it to go forward. Prudence requires that.

5. A serious legal question exists about the legality of the bonds to be issued.

The Treasurer has stated he has received conflicting legal opinions on whether the bonds may be issued as tax-exempt to the buyer—the better market exists for such bonds than for taxable bonds. However, US tax law requires the proceeds of such State tax-exempt bonds to be used only for deficits or capital construction. There is no assurance that the bonds would be considered legal if the proceeds are used for the “rainy day” fund as contemplated by the bill. If they turn out not to be, Buyers will have the right to rescind their purchase, and the State may be required to make up any shortfall.

6. The extraordinarily short period to challenge the legality of decisions regarding securitization is unnecessary.

The bill proposes that any legal challenge must be made within 30 days of action by the governing board. There are very few, if any, other statutes that have such a short statute of limitations on challenges. Why should a potential challenge be cut so short unless the doubts as to legality are sound?

7. The conflict of interest provisions are not adequate.

The provisions permit interested parties to serve on the governing board, and only require they disclose. Interested parties should be foreclosed from participating.

8. The Governing Board should include representatives of the Legislature and the Treasurer's Office.

It now is set up so that three of the four members are appointed by the Governor, without representation from the Legislature or the State Treasurer's office.

9. Securitizing tobacco funds is not necessary due to other funds or options.

The Governor's office received over \$140 million from the federal government to handle an estimated \$69 million shortfall for FY 04-05. Had it been, securitization now would be undesirable. Perhaps the use of those federal funds should be reconsidered and reprioritized, rather than moving ahead on securitization.

10. Insiders may unfairly profit, to the public's detriment.

There are no limits on the profits an underwriter or bond seller can make on securitization, nor is there a requirement for competitive bidding. Those in the finance industry who are lobbying for the bill may already have an inside track precluding a process totally in the public interest.