

2015 Regular Session

HOUSE BILL NO. 689

BY REPRESENTATIVE ADAMS

TOBACCO/TOBACCO PRODUCTS: Provides for the distribution of the proceeds of the sale of tobacco assets

1 AN ACT

2 To amend and reenact R.S. 39:99.2, 99.3(13), 99.12(A)(2)(b) and (B)(2), 99.14, and 99.18,
3 to enact R.S. 39:99.12.(A)(2)(c) and 99.21, and to repeal R.S. 39:99.12(B)(3),
4 relative to the sale of tobacco assets; to provide for the deposit of bond proceeds
5 received by the state from the sale of tobacco assets; to provide for the creation of
6 the Supplemental TOPS Fund and for deposits into and appropriations out of such
7 fund; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 39:99.2, 99.3(13), 99.12.(A)(2)(b) and (B)(2), 99.14, and 99.18 are
10 hereby amended and reenacted and R.S. 39:99.12.(A)(2)(c) and 99.21 are hereby enacted to
11 read as follows:

12 §99.2. Legislative findings and intent

13 The major United States tobacco manufacturers and forty-six states
14 (including the state of Louisiana) and other districts and territories of the United
15 States have entered into a master settlement agreement that should result in
16 Louisiana receiving substantial monies in perpetuity. The master settlement
17 agreement has become effective in accordance with its terms, and Louisiana has
18 begun receiving its allocation of the tobacco settlement payments to be made under
19 the master settlement agreement. By constitutional amendments adopted by the
20 legislature and the people of this state, ~~effective July 1, 2000~~, the monies to be

1 received as a result of the master settlement agreement by Louisiana after the
 2 effective date are dedicated to the ~~Millennium Trust and to the Louisiana Fund~~ TOPS
 3 Fund and the Coastal Protection and Restoration Fund in certain proportions as more
 4 fully set forth in Article VII, Sections 10.2(F), 10.8, and 10.9, respectively, of the
 5 Louisiana Constitution. The legislature has determined that there are risks with
 6 respect to the amounts of monies to be received as a result of the master settlement
 7 agreement, including among others the adjustments provided for in the agreement
 8 based upon tobacco consumption and litigation and potential further regulation of the
 9 tobacco industry, which could reduce the anticipated amounts of monies to be
 10 received in the future. The legislature has considered the financing techniques
 11 employed and to be employed by other jurisdictions to convert future tobacco
 12 settlement payments receivable as a result of the master settlement agreement into
 13 current assets and thereby to reduce exposure to the payment risks associated with
 14 the master settlement agreement and the credit risks associated with the tobacco
 15 industry. The legislature finds and declares it to be prudent and in the best interest
 16 of the state of Louisiana to employ such financing techniques to eliminate such risks
 17 as to a portion of the monies to be received as a result of the master settlement
 18 agreement by converting such monies to current assets to be deposited in ~~and~~
 19 ~~credited to~~ the Coastal Protection and Restoration Fund and the Millennium Trust,
 20 and credited to the TOPS Fund in accordance with the following provisions of this
 21 Subpart.

22 §99.3. Definitions

23 As used in this Subpart:

24 * * *

25 (13) "Residual interests" means the income of the corporation, and bond
 26 proceeds, if any, not previously paid to the state, that are in excess of the
 27 corporation's requirements to pay its operating expenses, debt service, sinking fund
 28 requirements, reserve fund requirements, and any other contractual obligations to the
 29 holders or that may be incurred in connection with the issuance of the bonds, the

1 amounts of which shall be determined by the board on or before January 1 and July
2 1 of each year for the next twelve months, and which, within ten days after each such
3 determination, shall be transferred and paid by the corporation to the state treasurer
4 for deposit in ~~and credit to~~ the Millennium Trust, and credited to the TOPS Fund,
5 pursuant to the agreement.

6 * * *

7 §99.12. Sale of tobacco assets

8 A.

9 * * *

10 (2)

11 * * *

12 (b) In the event a sale or sales authorized in this Paragraph is made during
13 any fiscal year commencing on or after July 1, ~~2003~~ 2014, the state treasurer, in
14 consultation with the commissioner of administration, shall provide for the deposit
15 into the Louisiana Fund an amount of the net proceeds of any sale or sales that,
16 together with other deposits, will ensure that a sufficient amount is deposited into the
17 Louisiana Fund to fund the appropriations from that fund for that fiscal year to the
18 extent required. ~~The Eighty percent of the~~ remainder of such proceeds after deposit
19 into the Louisiana Fund ~~and any residuals received in such state fiscal year one~~
20 hundred percent of the residual interests, shall be deposited into the Millennium
21 Trust and credited to the TOPS Fund. ~~Twenty percent of the remainder of the net~~
22 proceeds of such sale or sales shall be deposited to the Coastal Protection and
23 Restoration Fund pursuant to Article VII, Section 10.2(F)(1) of the Constitution of
24 Louisiana. The state shall maintain the responsibility to appropriate funds in an
25 amount sufficient to diligently enforce the MSA.

26 (c) In the event a timely request has been made by or on behalf of the board
27 to the State Bond Commission pursuant to its rules for the approval of the issuance
28 of the corporation's bonds or the corporation's request to purchase all or a portion of
29 the remaining state allocation, the chairman of the State Bond Commission shall

1 place the request on the agenda of the State Bond Commission at its next regularly
2 scheduled meeting or at a special meeting to be held prior to the next regularly
3 scheduled State Bond Commission meeting.

4 B.

5 * * *

6 (2) ~~Except as provided in Paragraph (3) of this Subsection, pursuant~~ Pursuant
7 to and in accordance with Article VII, Section 10.2(F)(1) and Section
8 10.8(A)(5)(4)(b), of the Louisiana Constitution, the amount eighty percent of the net
9 proceeds of any sale or sales authorized in Subsection A hereof, and one hundred
10 percent of the residual interests, ~~to shall~~ be deposited in ~~and credited to~~ the
11 Millennium Trust ~~is increased to one hundred percent and the amount thereof to be~~
12 ~~deposited in and credited to the Louisiana Fund is decreased to zero~~ and credited to
13 the TOPS Fund and twenty percent of the net proceeds of such sale or sales shall be
14 deposited to the Coastal Protection and Restoration Fund.

15 * * *

16 §99.14. Issuance of bonds of the corporation

17 A. In order to provide current assets and funds for the ~~Millennium~~
18 ~~Trust~~ TOPS Fund and the Coastal Protection and Restoration Fund pursuant to this
19 Subpart for the benefit of the state, the board is hereby authorized and empowered
20 to provide by resolution, at one time or from time to time, for the issuance of bonds
21 of the corporation in such amount or amounts as the board shall determine, subject
22 to the approval of the State Bond Commission and the Joint Legislative Committee
23 on the Budget. Such bonds shall be payable solely from funds of the corporation,
24 including, without limitation, all or any combination of the following sources: (i)
25 tobacco assets, (ii) the proceeds of the sales of any such bonds, (iii) earnings on
26 funds of the corporation or the indenture trustee, (iv) income, and (v) such other
27 funds as may become available, as shall be provided by the resolution of the board
28 authorizing any such bonds. Bonds issued under the provisions of this Subpart shall
29 not be deemed to nor constitute a debt or obligation of the state of Louisiana or a

1 pledge of the full faith or credit of the state, and all bonds shall contain on the face
2 thereof a statement to the effect that neither the full faith and credit nor the taxing
3 power nor any other asset or revenues of the state or any political subdivision thereof
4 is or shall be obligated or pledged to the payment of the principal of or the interest
5 on such bonds.

6 * * *

7 §99.18. Bond and other proceeds received by the state

8 All proceeds and monies received by the state, whether received as purchase
9 price for the tobacco assets sold or as the residual interests or in any other way
10 pursuant to this Subpart, shall be deposited in ~~and credited to~~ the Coastal Protection
11 and Restoration Fund and the Millennium Trust, and credited to the TOPS Fund. as
12 provided by R.S. 39:99.12(A)(2)(b) except as provided in R.S. 39:99.12B.(3).

13 * * *

14 §99.21. Supplemental TOPS Fund

15 A. The Supplemental TOPS Fund is hereby created in the state treasury. The
16 Supplemental TOPS Fund shall consist of monies appropriated to the Supplemental
17 TOPS Fund by the legislature, grants, donations, or any other monies.

18 B. In the event the State Bond Commission sells to the corporation any
19 portion of the state allocation in excess of the sixty percent authorized to be sold
20 pursuant to R.S. 39:99.12.(A)(1), the legislature shall provide for the appropriation
21 of funds from the state general fund, or from other monies available therefor, to the
22 Supplemental TOPS Fund in the following amounts: (1) for the first three hundred
23 million dollars of net proceeds, after financing costs, of bonds issued by the
24 corporation for the purchase of such state allocation, forty-seven percent of the
25 amount of such net proceeds, (2) for the second three hundred million dollars of net
26 proceeds, after financing costs, of bonds issued by the corporation for the purchase
27 of such state allocation, sixty-three percent of such net proceeds and (3) any
28 additional net proceeds, after financing costs, of bonds issued by the corporation for
29 the purchase of such state allocation, sixty-seven percent of such net proceeds.

1 C. Appropriations from the Supplemental TOPS Fund shall be restricted to
2 support of the state's program for financial assistance for students attending
3 Louisiana institutions of postsecondary education as established in Chapter 20-G of
4 Title 17 of the Louisiana Revised Statutes of 1950 and shall not be commingled with
5 the funds on deposit in the TOPS Fund. No portion of the net proceeds, after
6 financing costs, of any series of bonds issued by the corporation pursuant to this
7 Subpart shall be deposited into the Supplemental TOPS Fund.

8 D. Appropriations from the Supplemental TOPS Fund shall be made in the
9 following amounts for the following fiscal years: (1) for state fiscal year ending June
10 30, 2017, one-seventh of the balance of the Supplemental TOPS Fund on June 30,
11 2016, (2) for state fiscal year ending June 30, 2018, one-sixth of the balance of the
12 Supplemental TOPS Fund on June 30, 2017, (3) for state fiscal year ending June 30,
13 2019, one-fifth of the balance of the Supplemental TOPS Fund on June 30, 2018, (4)
14 for state fiscal year ending June 30, 2020, one-fourth of the balance of the
15 Supplemental TOPS Fund on June 30, 2019, (5) for state fiscal year ending June 30,
16 2021, one-third of the balance of the Supplemental TOPS Fund on June 30, 2020, (6)
17 for state fiscal year ending June 30, 2022, one-half of the balance of the
18 Supplemental TOPS Fund on June 30, 2021 and (7) for state fiscal year ending June
19 30, 2023, one hundred percent of the balance of the Supplemental TOPS Fund on
20 June 30, 2022.

21 Section 2. R.S. 39:99.12(B)(3) is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 689 Original

2015 Regular Session

Adams

Abstract: Incorporates changes in the constitution into present law regarding the securitization of tobacco assets. Also, deposits a portion of the proceeds from the securitization of additional tobacco Master Settlement Agreement proceeds in excess of the current 60% to the newly created Supplemental TOPS Fund and provides for appropriations out of the fund over seven years.

Present constitution (Art. VII, Sect. 10.2(F)(1)) requires that, if the state securitizes any portion of the money due to the state from the Master Settlement Agreement (MSA) between the state of Louisiana and tobacco manufacturers (the state's tobacco assets), 20% in the aggregate of the revenues received shall be transferred to the Coastal Protection and Restoration Fund.

Present constitution (Art. VII, Sect. 10.8(A)(4)(b)) requires the treasurer, beginning FY 2011-12, to credit to the TOPS Fund 100% of the MSA proceeds deposited into the Millennium Trust.

Present law, the Tobacco Settlement Financing Corporation Act, provides that in the event of a sale of up to 100% of the state's tobacco assets to the Tobacco Settlement Financing Corp., a portion of the monies from the sale shall be deposited into the Louisiana Fund to cover the appropriations from the fund for that fiscal year and that the remainder shall be deposited into the Millennium Trust.

Proposed law limits the amount deposited into the Louisiana Fund to the remainder needed to cover the fiscal year appropriations. Further requires 20% of the remaining monies be deposited into the Coastal Protection and Restoration Fund as required by present constitution and 80% be deposited into the Millennium Trust for the credit to the TOPS Fund. Requires the state to maintain the responsibility to appropriate funds to diligently enforce the MSA.

Proposed law established the Supplemental TOPS Fund as a special treasury fund. Provides that if the State Bond Commission sells any portion of the state allocation in excess of 60%, to the Tobacco Settlement Financing Corporation, the following amounts shall be deposited into the fund from the state general fund or from other available monies:

- (1) For the first \$300 million of net proceeds, 47% of such proceeds.
- (2) For the second \$300 million of net proceeds, 63% of such proceeds.
- (3) For any additional net proceeds, 67% of such proceeds.

Proposed law prohibits the net proceeds of certain bonds issued by the Tobacco Financing Corp. from being deposited into the Supplemental TOPS Fund.

Proposed law restricts the use of Supplemental TOPS Fund to support of the state's program for financial assistance for students attending La. institutions of postsecondary education as established in present law and prohibits commingling with the funds on deposit in the TOPS Fund.

Proposed law requires the following amounts be appropriated out of the fund from the balance of the fund at the end of the prior fiscal year:

- (1) For FY 2016-17, 1/7 of the balance.
- (2) For FY 2017-18, 1/6 of the balance.
- (3) For FY 2018-19, 1/5 of the balance.
- (4) For FY 2019-20, 1/4 of the balance.
- (5) For FY 2020-21, 1/3 of the balance.
- (6) For FY 2021-22, one half of the balance.
- (7) For FY 2022-23, the remainder of the fund balance at the end of the prior fiscal year.

Proposed law repeals a provision of present law (R.S. 39:99.12(B)(3)) dealing with deposits to be made in Fiscal Year 2001-2002 in the event of a sale or sales in that fiscal year.

(Amends R.S. 39:99.2, 99.3(13), 99.12(A)(2)(b) and (B)(2), 99.14, and 99.18; Adds R.S. 39:99.12.(A)(2)(c) and 99.21; Repeals R.S. 39:99.12.(B)(3))