

[CORRECTED COPY]
CHAPTER 68

AN ACT authorizing the issuance of cigarette tax securitization bonds, notes or other obligations by the New Jersey Economic Development Authority for the purposes of providing revenue to meet appropriations in any State fiscal year commencing on or after July 1, 2004, providing a source of payment and security for such bonds, notes or other obligations, supplementing P.L.1974, c.80 (C.34:1B-1 et seq.) and amending P.L.1997, c.264..

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.34:1B-21.16 Short title.

1. This act shall be known and may be cited as the "Cigarette Tax Securitization Act of 2004."

C.34:1B-21.17 Definitions relative to issuance of cigarette tax securitization bonds.

2. The following words or terms as used in this act shall have the following meanings unless a different meaning clearly appears from the context:

"Authority" means the New Jersey Economic Development Authority created pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

"Bonds" means any bonds, notes or other obligations issued or entered into by the authority pursuant to this act;

"Cigarette Tax" means the tax imposed by the State pursuant to the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), as amended and supplemented, on the sale, use or possession for sale or use within the State of each cigarette;

"Cigarette Tax Securitization Fund" means the fund by that name created and established pursuant to section 7 of this act;

"Cigarette Tax Securitization Proceeds Fund" means the fund by that name created and established pursuant to section 3 of this act;

"Dedicated Cigarette Tax Revenue Fund" means the fund by that name created and established pursuant to section 5 of this act;

"Dedicated Cigarette Tax Revenues" means an amount equal to the revenue collected by the State during each State fiscal year beginning on and after July 1, 2006 from \$0.0325 of the cigarette tax; and

"Refunding Bonds" means any bonds, notes or other obligations issued by the authority to refinance bonds, notes or other obligations previously issued or entered into by the authority pursuant to this act.

C.34:1B-21.18 "Cigarette Tax Securitization Proceeds Fund."

3. a. The authority shall establish and maintain a special nonlapsing fund to be known as the "Cigarette Tax Securitization Proceeds Fund" into which shall be deposited the following moneys:

(1) the proceeds from the sale of all bonds (other than refunding bonds) issued by the authority pursuant to this act which are remaining after any required deposit to any reserve or other fund established for such bonds or any refunding bonds in accordance with subsection a. of section 4 of this act and after the payment of all costs, fees and other expenses related to, or incurred by the authority or the State in connection with, the issuance of such bonds or any refunding bonds;

(2) any amounts which shall be appropriated by the Legislature for the purposes of such fund; and

(3) any other amounts or funds which the authority shall determine to deposit into such fund.

Moneys on deposit in the Cigarette Tax Securitization Proceeds Fund shall be invested in such obligations as the authority may determine or as shall otherwise be provided in any contract between the authority and the State Treasurer authorized and entered into pursuant to section 6 of this act, and interest or other earnings on any such investments shall be credited to such fund.

b. Amounts on deposit in the Cigarette Tax Securitization Proceeds Fund shall be withdrawn by the authority from time to time, upon written request of the State Treasurer or as otherwise provided in any contract between the authority and the State Treasurer authorized and

entered into pursuant to section 6 of this act, and paid to the State Treasurer for deposit into either the General Fund of the State or the Cigarette Tax Securitization Fund, as determined by the State Treasurer, and used for any lawful purpose of the State for which moneys on deposit in the General Fund may be used. All amounts withdrawn from the Cigarette Tax Securitization Proceeds Fund and deposited into the General Fund of the State as provided in this subsection shall represent financial resources and revenues of the State from that fund as certified by the Governor pursuant to Article VIII, Section II, paragraph 2 of the State Constitution for the State annual appropriation act for such State fiscal year, and as may be applicable for such annual appropriation act as may be amended and supplemented from time to time. Notwithstanding any provision of this subsection to the contrary, the State Treasurer shall not request the authority to pay, and the authority shall not pay, to the State Treasurer during any State fiscal year amounts on deposit in the Cigarette Tax Securitization Proceeds Fund which are in excess of the amounts anticipated as revenues from such fund.

C.34:1B-21.19 Powers of authority.

4. Notwithstanding the provisions of any law, rule, regulation or order to the contrary:

a. The authority shall have the power, pursuant to and in accordance with the provisions of this act and P.L.1974, c.80 (C.34:1B-1 et seq.), to issue bonds and refunding bonds, incur indebtedness and borrow money secured, in whole or in part, by money received pursuant to this act for the purpose of providing funds

(1) for deposit into the Cigarette Tax Securitization Proceeds Fund;

(2) in the case of refunding bonds, to apply to the refunding, purchase or payment of any bonds issued pursuant to this act;

(3) to fund any capitalized interest on such bonds or refunding bonds;

(4) to fund any reserve or other fund as may be established by the authority for such bonds or refunding bonds and to further secure such bonds and refunding bonds as may be determined by the authority; and

(5) to pay all costs, fees and other expenses related to, or incurred by the authority or the State in connection with, the issuance of such bonds or refunding bonds.

b. The authority may, in any resolution authorizing the issuance of bonds or refunding bonds issued by the authority pursuant to this act, pledge any contract entered into with the State Treasurer pursuant to section 6 of this act, or any part thereof, to secure the payment, purchase or redemption of bonds or refunding bonds or any obligations of the authority under any contract or agreement entered into by the authority pursuant to subsection c. of this section 4, and covenant as to the use and disposition of money available to the authority for the payment, purchase or redemption of bonds and refunding bonds and the payment of any obligations of the authority under any contract or agreement entered into by the authority pursuant to subsection c. of this section 4. All costs, fees and other expenses related to, or incurred by the authority or the State in connection with, the issuance of bonds or refunding bonds by the authority for the purposes set forth in this act may be paid by the authority from amounts it receives from the proceeds of the bonds or refunding bonds and from amounts it receives pursuant to sections 5 and 6 of this act, which costs, fees and other expenses may include, but are not limited to, any initial or annual administrative costs and fees of the authority attributable to any bonds or refunding bonds issued pursuant to this act, all legal, accounting, trustee or other professional fees, costs and expenses, and all other costs, fees, expenses, liabilities or obligations attributable to any agreement, contract or other commitment described in subsection c. of this section and any required rebate or other payment to the United States of America. The bonds or refunding bonds shall be authorized by resolution adopted by the authority, which shall stipulate the manner of execution and form of the bonds, whether the bonds or refunding bonds are to be issued in one or more series, the date or dates of issue, time or times of maturity, which shall not exceed 40 years, the rate or rates of interest payable on the bonds, which may be at fixed rates or variable rates, and which interest may be current interest or may accrue, the denomination or denominations in which the bonds are issued, conversion or registration privileges, the sources and medium of payment and place or places of payment, terms of redemption, privileges of exchangeability or interchangeability, and entitlement to priorities of payment or security in the

amounts to be received by the authority pursuant to sections 5 and 6 of this act. The bonds may be sold at a public or private sale at a price or prices determined by the authority. The authority is authorized to enter into any agreements necessary or desirable to effectuate the purposes of this section, including agreements to sell bonds or refunding bonds to any person and to comply with the laws of any jurisdiction relating thereto.

c. In connection with any bonds or refunding bonds issued or to be issued pursuant to this act, the authority may also enter into any revolving credit agreement, agreement establishing a line of credit or letter of credit, reimbursement agreement, interest rate exchange agreement, currency exchange agreement, interest rate floor or cap, options, puts or calls to hedge payment, currency, rate, spread or similar exposure, or similar agreements (and in connection therewith, agreements establishing a line of credit, letter of credit, insurance or relating to the collateralization of the obligations thereunder), float agreements, forward agreements, insurance contract, surety bond, commitment to purchase or sell bonds, purchase or sale agreement, or commitments or other contracts or agreements and other security agreements as shall be determined and approved by the authority.

d. No resolution adopted by the authority authorizing the issuance of bonds or refunding bonds pursuant to this act shall be adopted or otherwise made effective without the approval in writing of the State Treasurer. Except as provided by subsection i. of section 4 of P.L.1974, c.80 (C.34:1B-4), bonds or refunding bonds may be issued without obtaining the consent of any department, division, commission, board, bureau or agency of the State, other than the approval as required by this subsection, and without any other proceedings or the occurrence of any other conditions or other things other than those proceedings, conditions or things which are specifically required by this act.

e. Bonds and refunding bonds issued by the authority pursuant to this act shall be special and limited obligations of the authority payable from, and secured by, such funds and moneys determined by the authority in accordance with this section. Neither the members of the authority nor any other person executing the bonds or refunding bonds shall be personally liable with respect to payment of interest and principal on these bonds or refunding bonds. Bonds or refunding bonds issued pursuant to the provisions of this act shall not be a debt or liability of the State or any agency or instrumentality thereof, other than a special and limited obligation of the authority, either legal, moral or otherwise, and nothing contained in this act shall be construed to authorize the authority to incur any indebtedness on behalf of or in any way to obligate the State or any political subdivision thereof other than the authority, and all bonds and refunding bonds issued by the authority shall contain a statement to that effect on their face.

f. The authority is authorized to engage, subject to the approval of the State Treasurer and in such manner as the State Treasurer shall determine, the services of bond counsel, financial advisors and experts, placement agents, underwriters, trustees, verification agents, remarketing agents, auction agents, broker-dealers, appraisers, and such other advisors, consultants and agents as may be necessary to effectuate the purposes of this act.

g. All bonds or refunding bonds issued by the authority pursuant to this act are deemed to be issued by a body corporate and politic of the State for an essential governmental purpose, and the interest thereon and the income derived from all funds, revenues, incomes and other moneys received for or to be received by the authority and pledged and available to pay or secure the payment of bonds or refunding bonds and the interest thereon, shall be exempt from all taxes levied pursuant to the provisions of Title 54 of the Revised Statutes or Title 54A of the New Jersey Statutes, except for transfer inheritance and estate taxes levied pursuant to Subtitle 5 of Title 54 of the Revised Statutes.

h. The State hereby pledges and covenants with the holders of any bonds or refunding bonds issued pursuant to the provisions of this act, that it will not limit or alter the rights or powers vested in the authority by this act, nor limit or alter the rights or powers of the State Treasurer in any manner which would jeopardize the interest of the holders or any trustee of such holders, or inhibit or prevent performance or fulfillment by the authority or the State Treasurer with respect to the terms of any agreement made with the holders of these bonds or refunding bonds or agreements made pursuant to subsection c. of this section, except that the failure of the Legislature to appropriate moneys for any purpose of this act shall not be deemed a violation of

this section.

i. Notwithstanding any restriction contained in any other law, rule, regulation or order to the contrary, the State and all political subdivisions of the State, their officers, boards, commissioners, departments or other agencies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, saving and loan associations, investment companies and other persons carrying on a banking or investment business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries, and all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligations of the State, may properly and legally invest any sinking funds, moneys or other funds, including capital, belonging to them or within their control, in any bonds or refunding bonds issued by the authority under the provisions of this act; and said bonds and refunding bonds are hereby made securities which may properly and legally be deposited with, and received by any State or municipal officers or agency of the State, for any purpose for which the deposit of bonds or other obligations of the State is now, or may hereafter be, authorized by law.

C.34:1B-21.20 "Dedicated Cigarette Tax Revenue Fund."

5. a. There is hereby created and established in the Department of the Treasury a separate nonlapsing fund to be known as the "Dedicated Cigarette Tax Revenue Fund." During the State fiscal year beginning July 1, 2006 and during each succeeding State fiscal year in which the authority has outstanding bonds or refunding bonds which have been issued pursuant to this act or is obligated to make any payments under any contract or agreement entered into by the authority pursuant to subsection c. of section 4 of this act, the State Treasurer shall credit to such Fund, on a monthly basis, an amount equivalent to the dedicated cigarette tax revenues received by the State during each calendar month of such fiscal year. Provided however, that:

(1) no credits of dedicated cigarette tax revenues shall be made to the Dedicated Cigarette Tax Revenue Fund in any State fiscal year until the deposits of revenue from the cigarette tax required by section 4 of P.L.1997, c.264 (C.26:2H-18.58g) into the Health Care Subsidy Fund have been fully made in such fiscal year, and

(2) in each month of a State fiscal year beginning after the month in which the final deposits of revenue from the cigarette tax required by section 4 of P.L.1997, c.264 (C.26:2H-18.58g) into the Health Care Subsidy Fund have been fully made for such fiscal year, the State Treasurer shall credit to the Dedicated Cigarette Tax Revenue Fund an amount equivalent to all revenue collected by the State from the cigarette tax during such calendar month until the amount credited to the Dedicated Cigarette Tax Revenue Fund from the beginning of such fiscal year equals the amount that would have been credited to such Fund since the beginning of such fiscal year in accordance with the preceding sentence if the deposits of revenue from the cigarette tax required by section 4 of P.L.1997, c.264 (C.26:2H-18.58g) into the Health Care Subsidy Fund were not required to have been made.

b. In each State fiscal year during which the authority has outstanding bonds or refunding bonds which have been issued pursuant to this act or is obligated to make any payments under any contract or agreement entered into by the authority pursuant to subsection c. of section 4 of this act, the State Treasurer shall pay to the authority solely from the Dedicated Cigarette Tax Revenue Fund in accordance with the provisions of any contract between the authority and the State Treasurer authorized and entered into pursuant to section 6 of this act, an amount equal to the debt service payable on the authority's then outstanding bonds or refunding bonds issued pursuant to this act during such fiscal year and any amounts required to be paid by the authority during such fiscal year under any contract or agreement entered into by the authority pursuant to subsection c. of section 4 of this act and such other additional amounts as shall be authorized by this act and required to be paid to the authority pursuant to any contract between the authority and the State Treasurer authorized and entered into pursuant to section 6 of this act; provided, however, that the payment of all such amounts to the authority shall be subject to and dependent upon appropriations being made from time to time by the Legislature of the amounts thereof for the purposes of this act. Notwithstanding any other provision of any law, rule, regulation or order to the contrary, the authority shall be paid only such amounts as shall be

required by the provisions of any contract between the authority and the State Treasurer authorized and entered into pursuant to section 6 of this act and the incurrence of any obligation of the State under any such contract, including any payments to be made thereunder from the Dedicated Cigarette Tax Revenue Fund, shall be subject to and dependent upon appropriations being made from time to time by the Legislature for the purposes of this act.

c. If the authority no longer has outstanding bonds or refunding bonds which have been issued pursuant to this act and is no longer obligated to make any payments under any contract or agreement entered into by the authority pursuant to subsection c. of section 4 of this act or to pay any other costs, fees, expenses, liabilities and other obligations incurred by the authority and the State pursuant to this act, then all monies on deposit in the Dedicated Cigarette Tax Revenue Fund shall be transferred to the General Fund.

C.34:1B-21.21 Contracts to implement payment arrangement.

6. The State Treasurer and the authority are authorized to enter into one or more contracts to implement the payment arrangement that is provided for in section 5 of this act. The contract or contracts shall provide for payment by the State Treasurer of the amounts required to be paid from the Dedicated Cigarette Tax Revenue Fund pursuant to section 5 of this act and shall set forth the procedure for the transfer of moneys for the purpose of paying such amounts. The contract or contracts shall contain such terms and conditions as are determined by the authority and the State Treasurer, and shall include, but not be limited to, terms and conditions necessary and desirable to secure any bonds or refunding bonds of the authority issued pursuant to this act or any obligations of the authority under any contract or agreement entered into by the authority pursuant to subsection c. of section 4 of this act; provided however, that notwithstanding any other provision of any law, rule, regulation or order to the contrary, the authority shall be paid only such amounts as shall be required by the provisions of any contract or contracts, and the incurrence of any obligation of the State under any such contract or contracts, including any payments to be made thereunder from the Dedicated Cigarette Tax Revenue Fund, shall be subject to and dependent upon appropriations being made from time to time by the Legislature for the purposes of this act.

C.34:1B-21.22 "Cigarette Tax Securitization Fund."

7. There is hereby created and established in the Department of the Treasury a separate non-lapsing fund to be known as the "Cigarette Tax Securitization Fund." Revenue derived from the proceeds of bonds issued by the authority pursuant to this act may be deposited into the Cigarette Tax Securitization Fund and balances therein may be transferred to the General Fund.

8. Section 4 of P.L.1997, c.264 (C.26:2H-18.58g) is amended to read as follows:

C.26:2H-18.58g Disposition of revenue collected from cigarette tax.

4. Notwithstanding the provisions of any other law to the contrary,

a. commencing July 1, 1998 and ending June 30, 2006: after the deposit required pursuant to section 5 of P.L.1982, c.40 (C.54:40A-37.1), the first \$150,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) and the first \$5,000,000 of revenue collected annually from the "Tobacco Products Wholesale Sales and Use Tax Act," P.L.1990, c.39 (C.54:40B-1 et seq.), shall be deposited into the Health Care Subsidy Fund established pursuant to section 8 of P.L.1992, c.160 (C.26:2H-18.58); and the next \$390,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be appropriated annually for health programs, and the next \$50,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be appropriated annually to the New Jersey Economic Development Authority for payment of debt service incurred by the authority for school facilities projects and in fiscal years commencing July 1, 2002 and July 1, 2003, the next \$30,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be directed to the Department of Health and Senior Services to fund anti-smoking initiatives, except that the amount shall be \$40,000,000 in the fiscal year

commencing July 1, 2004 and \$45,000,000 in the fiscal year commencing July 1, 2005; and

b. commencing with fiscal years beginning on and after July 1, 2006, after the deposit required pursuant to section 5 of P.L.1982, c.40 (C.54:40A-37.1), the first \$150,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) and the first \$5,000,000 of revenue collected annually from the "Tobacco Products Wholesale Sales and Use Tax Act," P.L.1990, c.39 (C.54:40B-1 et seq.), shall be deposited into the Health Care Subsidy Fund established pursuant to section 8 of P.L.1992, c.160 (C.26:2H-18.58).

(cf: P.L.2003, c.115, s.3)

9. The provisions of this act shall be severable, and if any of the provisions hereof shall be held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of any of the remaining provisions of this act.

10. This act shall take effect immediately.

Approved June 30, 2004.