2011 Legislative Changes to the Master Settlement Agreement Entities

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Legislation enacted during the 2011 legislative session directs future Master Settlement Agreement funds to the General Fund, abolishes the Health & Wellness Trust Fund, changes the funding structure of the Tobacco Trust Fund, and diverts funds from Golden LEAF to the General Fund for the biennium.

Executive Summary

During the 2011 legislative session, the North Carolina General Assembly fundamentally changed how North Carolina allocates its Master Settlement Agreement (MSA) funds. Under the MSA, tobacco product manufacturers agreed to a number of conditions, from restrictions on advertising to annual payments to states, and received immunity from state liability claims over harm caused by tobacco.[1] North Carolina is expected to receive in excess of $4.5 billion from tobacco product manufacturers over the first 25 years of the agreement, 2000 to 2025.

Beginning in FY 2011-12, North Carolina's MSA funds that are not obligated for (1) debt service authorized in S.L. 2004-179 or (2) payments to the University Cancer Research Fund (G.S. 116-29.1) will be transferred to the General Fund to be used for the benefit of tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related businesses, and for the benefit of health-related programs and initiatives. The General Assembly also abolished the Health and Wellness Trust Fund and its governing commission, and intercepted over $17.5 million in MSA funds that otherwise would have been distributed to the nonprofit foundation Golden LEAF (Long-term Economic Advancement Foundation).

The provisions enacting these changes can be found in S.L. 2011-145, Section 6.11 and S.L. 2011-391, Sections 7(a), 7(b) and 8. This brief summarizes the major changes enacted during the 2011 legislative session and serves as an update to the Division's February 2011 fiscal brief, A Review of the First 10 Years of the Master Settlement Agreement.

[1] For a summary of the conditions of the MSA, click here.

Background

In 1999, the North Carolina General Assembly created three grant-making entities to administer the State's Master Settlement Agreement (MSA) funds: two State Commissions – the Health & Wellness Trust Fund Commission (HWTF) and the Tobacco Trust Fund Commission (TTF) – and one economic development nonprofit organization, Golden LEAF (Long-term Economic Advancement Foundation). Under S.L. 1999-2, Golden LEAF received 50 percent of the State's annual MSA funds while HWTF and TTF each received 25 percent annually. Since FY 1999-2000, North Carolina has received nearly $1.9 billion in MSA receipts from tobacco product manufacturers and has used these funds for grants, debt service, cancer research, and General Fund availability. The table below shows the amount of MSA funds allocated to each entity and the total funding received by the State since the settlement.

Table 1. MSA Funds Received by Entity

$ in thousands

Fiscal Year	HWTF	TTF	Golden LEAF	Total
1999-2000	$ 47,351	$ 47,351	$ 94,701	$ 189,402
2000-01	$ 35,068	$ 35,068	$ 70,137	$ 140,274
2001-02[1]	$ 43,959	$ 43,959	$ 87,918	$ 175,836
2002-03	$ 42,300	$ 42,300	$ 86,628	$ 171,228
2003-04	$ 37,627	$ 37,627	$ 73,226	$ 148,480
2004-05	$ 37,160	$ 37,160	$ 74,320	$ 148,641
2005-06	$ 34,113	$ 34,113	$ 68,227	$ 136,453
2006-07	$ 35,706	$ 35,706	$ 71,413	$ 142,825
2007-08	$ 39,988	$ 39,988	$ 79,977	$ 159,954
2008-09	$ 43,797	$ 43,797	$ 87,593	$ 175,187
2009-10	$ 36,590	$ 36,590	$ 73,179	$ 146,358
2010-11	$ 34,564	$ 34,564	$ 69,128	$ 138,256
Total	**$ 468,223**	**$ 468,223**	**$ 936,447**	**$ 1,872,894**

A discussion of each entity and its use of MSA funds through FY 2009-10 can be found in A Review of the First 10 Years of the Master Settlement Agreement.

2011 Legislative Changes

The 2011 General Assembly, through S.L. 2011-145, entitled Appropriations Act of 2011, and S.L. 2011-391, entitled 2011 Budget Technical Corrections, fundamentally altered how North Carolina distributes the funding it receives due to the MSA. Section 6.11 of the Appropriations Act of 2011 abolished HWTF and changed both the funding mechanism for TTF and how the State Treasurer distributes North Carolina's MSA funds. Before the General Assembly enacted this legislation, the MSA auditors[2] deposited 50 percent of North Carolina's MSA receipts with Golden LEAF and 50 percent into a Settlement Reserve fund with the Department of the State Treasurer (G.S. 143C-9-3(b), (c)). Funding for HWTF and TTF was distributed from this reserve directly to the Commissions, and was not included in the calculation of General Fund availability. S.L. 2011-145, Section 6.11(d) directs that, as of July 2011, the State's portion of its MSA funds shall no longer be distributed directly to the Commissions. Instead, the Settlement Reserve fund will be distributed for:

- Debt Service: HWTF and TTF were responsible for debt service payments on special indebtedness issued in the State Capital Facilities Act of 2004 (S.L. 2004-179). Debt service payments are required through FY 2030-31 but will now come from the Settlement Reserve Fund, not from the two Commissions. Debt service will exceed $35.8 million in FY 2011-12 and FY 2012-13. Debt service begins to decrease in FY 2012-13, but will remain over $30 million annually through FY 2024-25;
- The University Cancer Research Fund: G.S. 116-29.1 previously required TTF to make an annual $8 million payment to the University Cancer Research Fund. Per S.L. 2011-145, Section 6.11(c), this annual payment will instead come from the Settlement Reserve Fund; and
- General Fund Availability: Any funds in excess of those needed to fulfill the debt service and University Cancer Research Fund obligations will be deposited into the General Fund and be included in the estimate of general availability. These General Funds are to be used for the benefit of tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related businesses and for the benefit of health-related programs and initiatives.

The following sections provide information on these adjustments as well as additional details on the changes to the three MSA entities.

Health & Wellness Trust Fund Commission

The General Assembly abolished HWTF - its fund and the Commission, repealing Article 6C of Chapter 147 of the General Statues, in S.L. 2011-145, Section 6.11(a). Upon its dissolution, HWTF had both encumbered and unencumbered funds. HWTF's encumbered funds (i.e., those obligated through existing grants) will be administered by the Department of Health and Human Services (DHHS) until all grant commitments are fulfilled, which is expected to occur during FY 2011-12. Unencumbered funds were transferred to the General Fund as of August 2011 and are being held for use by DHHS in FY 2011-12. DHHS is directed to use these nonrecurring funds as follows:

- Up to $22 million to administer grants for Teen Tobacco, Obesity Prevention, ChecKmeds, Medication Assistance, and the Roanoke Chowan Health Center Telehealth program;
- $10 million to reduce the total savings required to be achieved for the Medicaid program by Community Care of North Carolina; and
- The remainder, estimated to be approximately $3 million, to reduce the Medicaid Provider Rate cut.

Tobacco Trust Fund Commission

The mission and structure of TTF are not changed in S.L. 2011-145. However, TTF is now funded through a General Fund appropriation to the Department of Agriculture and Consumer Services. In S.L. 2011-145, TTF is appropriated $2 million nonrecurring in both FY 2011-12 and FY 2012-13 (See pg. H-2, Item 9 in the Committee Report). The 2011 General Assembly did not use any additional funds from TTF's April 2011 MSA funds or its cash balance. However, Section 2.2(h) of the Appropriations Act of 2010, S.L. 2010-31, used $5 million of TTF's April 2011 MSA funds for general availability and the Governor

[2] PWC (formerly Price Waterhouse Coopers) is the MSA, overseeing manufacturer contributions, the distribution of funds to the states, and disputes over contributions and distributions.

diverted another $5 million from the Commission to meet the requirements of S.L. 2011-15 (SB 109), leaving TTF with approximately $540,000 of its April 2011 MSA funds. The $2 million will be added to these funds to cover TTF operations and grants for FY 2011-12.

S.L. 2011-145, Section 6.11(f), sets a $625,000 administrative expenditure cap for TTF. This cap replaces the 2.5 percent or $1 million limit on administrative spending set in G.S. 143-717(i) for the FY 2011-13 biennium. TTF must cover both Commission operations and the enforcement of the MSA with these funds. MSA enforcement includes work performed by the Office of the Attorney General, to ensure that tobacco manufacturers comply with the terms of the MSA, such as participating in lawsuits challenging the constitutionality of the MSA, following up with manufacturers who fail to make their annual MSA payments, and working with the National Association of Attorneys General on a variety of MSA issues. Historically, Golden LEAF, TTF, and HWTF split the cost of MSA enforcement, each paying a proportionate share based on the distribution of MSA funds; also, the Office of the Attorney General has typically dedicated one attorney and one paralegal to MSA enforcement. HWTF and TTF each have spent $50,000 annually on MSA enforcement. Starting in FY 2011-12, TTF assumes full responsibility for these costs.

Golden LEAF

Golden LEAF differs from HWTF and TTF in two primary ways: 1) it is an independent nonprofit, not a State entity and 2) its MSA funds are transferred directly from the MSA auditors to the Foundation, never going through State coffers. No legislation passed during the 2011 session altered the structure of Golden LEAF or permanently changed the MSA distribution to the Foundation. However, the State did intercept $17.6 million of the Foundation's anticipated MSA payments in each year of the biennium and directed that Golden LEAF's portion of any funds deposited into North Carolina's Disputed Payment Account[3] be transferred to the General Fund, not to Golden LEAF. This is the first time funds from Golden LEAF have been intercepted by the General Assembly for General Fund availability. While this diversion impacts Golden LEAF's expected revenue for the biennium and, therefore, the amount of grants that can be awarded, the Foundation remains an independent nonprofit organization with net assets valued in excess of $700 million as of June 30, 2011, and is currently accepting and funding grant applications.

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[3] The Disputed Payments Account is an interest-bearing escrow account into which Participating MSA Manufacturers may deposit "disputed" payments. A disputed payment occurs when the manufacturer disagrees with the auditor on the required MSA payment. Once the dispute is settled, the funds are distributed to the prevailing party (i.e. returned to the manufacturer or distributed to the states). Regardless of whether a manufacturer deposits funds into this Disputed Payments Account, if the dispute is resolved in the states' favor, the manufacturers would owe the states withheld funds plus interest.