



# CRC Memorandum

## STATE CONSTITUTIONAL ISSUES ON THE NOVEMBER GENERAL ELECTION BALLOT - I PROPOSAL 02-04: REALLOCATE THE TOBACCO SETTLEMENT REVENUE RECEIVED BY THE STATE FROM CIGARETTE MANUFACTURERS

Proposal 02-04 is on the statewide ballot as the result of initiative petitions circulated by the Citizens for a Healthy Michigan ([www.healthymichigan.org/new/homepage.asp](http://www.healthymichigan.org/new/homepage.asp)) and would amend Article 9, Section 36, of the 1963 Michigan Constitution to require that 90 percent of revenues received from the "Tobacco Master Settlement Agreement" (\$297 million of \$330 million for 2003) must be appropriated and distributed to specified health care providers and certain other organizations to improve the quality of health of the residents of the state of Michigan.

The proposal is opposed by People Protecting Kids and the Constitution ([www.protectmiconstitution.com](http://www.protectmiconstitution.com)).

### Background

On November 23, 1998, 46 states, including Michigan, the District of Columbia and 6 territories signed an agreement with the 4 major tobacco companies to settle lawsuits seeking to recover the Medicaid costs of treating smokers. The agreement, which will result in payments indefinitely, provides that states would be paid up to \$206 billion for the years 2000 through 2025. The actual amount of money to be paid each state is annually determined by a formula that considers inflation, the number cigarettes sold by each participating manufacturer, and the relative share that the participating providers have of the total market.

the Michigan Merit Award Trust Fund, which funds merit award scholarships. Public Act 489 of 2000 requires that 25 percent of tobacco settlement monies be deposited into the Tobacco Settlement Trust Fund. Among recipients of these funds in FY2003 are: Merit award scholarship (\$114.3 million); the Life Sciences Corridor (\$45 million); the Elder Pharmaceutical Insurance Program (\$30.0 Million); and the Council of Michigan Foundations (\$4.0 million).

While the acts require that both funds be created, they also

The original estimate of \$206 billion was predicated on the signing tobacco companies maintaining their share of the total tobacco market and assumptions about the number of smokers. The Council of State Governments estimates that the decline in market share and the decrease in smokers will result in a \$14 billion decrease from original estimates for the years 2000-10 (\$70 billion to \$56 billion).

### Payments to Michigan

Payments to Michigan are split between initial payments and annual payments during the first four years (1999-2003). Only the annual payments continue thereafter. Receipts and estimated income for the years 1999-2005 are summarized in **Table 1**.

Revenue Estimates by the Office of the State Budget are somewhat higher for fiscal years 2002 and 2003 (\$328.2 million vs. \$320.5 million and \$328.6 million vs. \$317.2 million, respectively) and an amount of \$330 million is reflected in the ballot language adopted by the State Board of Canvassers.

### Current Use of Tobacco Settlement Funds

Current use of these funds is defined by Public Act 94 of 1999 that requires 75 percent of the monies received be placed in

**Table 1**  
**Tobacco Settlement Payments to Michigan**  
**FY 2000-2005**  
**(in Millions)**

<u>Fiscal Year</u>	<u>Date of Payment</u>	<u>Type of Payment</u>	<u>Amount of Payment</u>
1999-2000	12/14/99	Initial	\$107.5
	1/10/00	Initial	93.6
	4/15/00	Annual	<u>150.5</u>
Subtotal			\$351.6
2000-2001	1/10/01	Initial	\$ 84.2
	4/15/01	Annual	<u>176.6</u>
Subtotal			\$260.9
2001-2002	1/10/02	Initial	\$ 96.1
	4/15/02	Annual	<u>224.5</u>
Subtotal			\$320.5
2002-2003	1/10/03	Initial	\$ 93.6
	4/15/03	Annual	<u>223.6</u>
Subtotal			\$317.2
2003-2004	4/15/04	Annual	\$273.9
2004-2005	4/15/05	Annual	\$272.2

Note: Totals may not add due to rounding. Figures for FY 2002 and after are estimates.

Source: Michigan Senate Fiscal Agency

## CRC Memorandum

**Table 2**  
**Tobacco Settlement - Revenues and Expenditures**  
**Fiscal Years 2000 – 2003**

				<u>FY2003</u>	
	<u>FY2000</u>	<u>FY2001</u>	<u>FY2002</u>	<u>Current</u> <u>Appropriation</u>	<u>02-04</u> <u>Proposal</u>
Total Tobacco Settlement Revenue	\$351.6	\$261.0	\$328.2	\$328.6	\$330.0
<i>Merit Award Trust Fund:*</i>					
Revenues:					
Share of Annual Revenue	105.5	130.5	246.1	246.5	
Balance from prior year		10.9	39.6	20.9	
Interest Earnings	<u>4.1</u>	<u>4.6</u>	<u>6.0</u>	<u>6.3</u>	
Revenue Subtotal	109.6	146.0	291.7	273.6	330.0
Expenditures:					
Merit award scholarships**	90.4	82.3	112.2	114.3	0.0
Tuition incentive program**	5.3	5.3	5.3	5.3	0.0
MEAP testing**	3.0	18.8	18.9	18.9	0.0
Michigan Education Savings Plan**			1.0	1.0	0.0
Post secondary access student scholarships**			2.0	2.0	0.0
Nursing scholarships				4.0	3.3
Lapse to general fund (PA 120 of 2001)			72.5		
Lapse to general fund (E.O. 2001-9)			59.0		
Lapse to general fund (PA 530 of 2002)***				100.0***	33.0***
Expense Subtotal	<u>98.7</u>	<u>106.4</u>	<u>270.9</u>	<u>245.5</u>	
Balance - Merit Award Trust***	10.9	39.6	20.9***	28.1	
<i>Tobacco Settlement Trust Fund:*</i>					
Revenues:					
Share of annual revenue	246.1	130.5	82.1	82.2	
Balance from prior year		116.9	117.8	39.8	
Interest earnings	<u>10.2</u>	<u>11.0</u>	<u>5.0</u>	<u>2.9</u>	
Revenue Subtotal	256.3	258.4	204.9	124.8	
Expenditures:					
Nonprofit Hospitals				0.0	92.0
Tobacco-Free Futures Fund				0.0	49.3
Licensed Nursing Homes				0.0	42.7
Licensed Hospices				0.0	6.6
Healthy Michigan Foundation				0.0	3.3
Nurse Practitioners				0.0	3.3
School Health Centers				0.0	3.3
Council of Michigan Foundations	10.2	6.0	4.0	4.0	6.6
MEAP testing	12.0				
Michigan Education Savings Plan		2.0			
Post secondary access student scholarships		1.0			
Career development initiative	47.0				
Elder pharmaceutical insurance (EPIC)		1.1	45.0	30.0	42.9
Emergency pharmaceutical program for seniors		4.5			
Long term care innovation grants	10.0				
Medicaid nursing home personal needs allowance**	5.0	5.0	5.0	5.0	0.0
Office on Aging long term care advisor**	0.2	3.0	0.8	0.8	0.0
Office on Aging respite care**	5.0	5.0	5.0	5.0	0.0
Indigent medical program		10.0	2.8		
Rural health		10.0			
Medicaid support**		20.0	30.0	30.0***	
Wayne State University - perinatal		3.0			
Life Sciences Corridor	50.0	50.0	45.0	45.0	42.9
Rare isotope accelerator project**				2.0	0.0
Attorney General tobacco settlement administration**				0.4	0.0
Lapse to General Fund (April 2001)		20.0			
Lapse to General Fund (PA 120 of 2001)			3.0		
Lapse to General Fund (E.O. 2001-9)			<u>24.5</u>		
Expense Subtotal	<u>139.4</u>	<u>140.6</u>	<u>165.1</u>	<u>122.2</u>	
Balance - Tobacco Settlement Trust***	116.9	117.8	39.8***	2.6	

\* By statute, the tobacco settlement money is allocated to the Merit Award Fund as follows: 30 percent in FY 2000; 50 percent in FY 2001; and 75 percent in FY 2002 and thereafter. The remainder is deposited in the Tobacco Settlement Trust Fund. \*\* Appropriation items in FY2003 for which no tobacco settlement funds would be available if the proposal is adopted total \$184.7 million. \*\*\* See paragraph at top of page 3

Source: Columns 1-4 from Michigan Office of the State Budget

# CRC Memorandum

permit the legislature to designate their use through the appropriation process without limitation.

Column 5 of **Table 2** shows the effect that passage of the proposal would have on state appropriations for FY2003. As appropriated, the budget is in balance. Assuming that the legislature chooses not to replace any of

the funds that would be reduced or eliminated with general fund dollars the budget would become \$130.0 million out of balance because \$100.0 million of tobacco settlement funding is to be used to balance the budget by lapsing to the general fund and \$30 million for the Medicaid program cannot be reduced without changing the eligibility criteria and/or reducing

provider reimbursement. If the entire 10 percent in tobacco settlement funding (\$33.0 million) is used to address the imbalance and if balances remaining in the Tobacco Settlement Trust Fund (\$39.8 million) and the Merit Award Trust Fund (\$20.9 million) are used, the FY03 budget would remain out of balance by \$36.3 million.

## Proposal 02-04

The proposal introduces 6 new requirements to the Michigan Constitution:

### 1. Dedication of tobacco settlement revenue to improvement of health

Proposal 02-04 would require that 90 percent of money received by Michigan from Tobacco Settlement Revenue be dedicated to improving the quality of health of Michigan residents.

### 2. Creation of funds

Three new funds would be created within the Department of Treasury by the proposed amendment: the Tobacco Illness Care Fund; the Tobacco Research and Education Fund; and, the Senior Citizen Prescription Drug Assistance Fund.

### 3. Expenditures

The proposal specifies the percentage of the total each fund is to receive and further defines the distribution of monies within these funds to specific entities. **Table 3** is a representation of how the estimated \$330 million for 2003 would be allocated.

**Table 3**  
**Sample Distribution of Funds under Proposal 02-04**  
**Using Estimated Amount for 2003 of \$330 Million**

<u>Entity</u>	<u>Number in 2001</u>	<u>Percent of \$330 Million</u>	<u>Dollar Amount</u>	<u>Distribution to a Single Entity</u>	<u>Allocated to Multiple Entities</u>
<b>Tobacco Illness Care Fund</b>					
Nonprofit Hospitals	164	28.0	\$ 92,400,000		X
Licensed Nursing Homes	545	13.0	42,900,000		X
Licensed Hospices that Serve Medicaid Patients	71	2.0	6,600,000		X
Healthy Michigan Foundation		1.0	3,300,000	X	
Nurse Practitioners with 20% or More Annual Practice Revenue from Medicaid	2,423*	1.0	3,300,000		X
School-Linked Health Care Centers	28	1.0	<u>3,300,000</u>		X
Subtotal - Illness		46.0	\$151,800,000		
<b>Tobacco Settlement Research and Education Fund</b>					
Tobacco-Free Futures Fund, Inc.		15.0	\$ 49,500,000	X	
Health and Aging Research and Development Initiative (Life Sciences Corridor):					
General Use		11.05	36,465,000		X
Tobacco Related Research		1.95	6,435,000		X
Council of Michigan Foundations		2.0	6,600,000	X	
Nurse Scholarship Program		1.0	<u>3,300,000</u>		X
Subtotal - Research and Education		31.0	\$102,300,000		
<b>Senior Citizen Prescription Drug Assistance Fund</b>					
Elder Prescription Drug Program		13.0	\$ 42,900,000	X	
<b>State General Fund</b>					
State General Fund		10.0	\$ 33,000,000	X	
<b>Total</b>			100.0	\$330,000,000	

\* Total number – those who would meet the 20 percent requirement not available.

## CRC Memorandum

**Unspent Funds.** Unspent monies of the 90 percent distributed under the proposed amendment would remain in the respective funds created by the proposal. Any interest earnings would also remain in the fund. Unspent funds and interest earnings would be distributed the next year as a part of the annual distribution. If a recipient of funds designated by the proposal ceases to exist or becomes unable to accept funds, this amount stays within the respective fund and is allocated to the remaining recipients on a pro rata basis.

**Distribution of the Funds to Various Entities.** Some funds would go directly to a specific entity and some are to be distributed among classes of organizations and health care providers. The basis of allocation is as follows:

### Tobacco Illness Care Fund:

**Nonprofit Hospitals** monies would be allocated on basis of net patient revenue. Each hospital would receive that percentage of the funds that their net patient income represents of the total net patient income of all hospitals. (The html version of this ballot analysis includes a table showing the distribution to hospitals that would occur using FY2000 net patient income (latest figures available). To view this table, go to [www.crcmich.org/PUBLICAT/2000s/2002/props1-4/hosp.html](http://www.crcmich.org/PUBLICAT/2000s/2002/props1-4/hosp.html).)

**Licensed Nursing Home** funds would be allocated to both profit and non-profit homes according to the percent of licensed beds in each facility compared to total licensed beds in the state.

**Licensed Hospices** would receive a portion of funds dedicated to them on the basis of their share of total Medicaid expenditures for hospice care - including both fee for service payments and payments made through health plans.

**Healthy Michigan Foundation** was to be created to fund programs in schools and communities for anti-tobacco promotion and education. When the Michigan Health and Hospital Association filed incorporation papers it was determined that the name had already been granted to another organization. The legal status of the Healthy Michigan Foundation is currently uncertain.

**Nurse Practitioners** with at least 20 percent of their annual practice revenue from Medicaid would receive monies based on their share of total Medicaid expenditures for nurse practitioner care - including both fee for service payments and payments made through health plans.

**School-Linked Health Centers** are defined but distribution is not specified by the proposal. Funding for these centers was eliminated through an executive order reduction in FY2002, but was later restored. The centers provide: primary care; screening assessment; and, health and promotion and referral services to children and teenagers in settings affiliated with schools.

### Tobacco Settlement Research and Education Fund:

**The Tobacco-Free Futures Fund, Inc.** was incorporated in March 2002. The

Citizens for a Healthy Michigan Coalition states that the money will be used to “finance a comprehensive tobacco control program based on the U.S. Centers for Disease Control and Prevention best practices recommendations”.

**The Health and Aging Research and Development Initiative** also known as the Life Science Corridor receives 13 percent of the tobacco settlement funds. The way in which these monies are to be distributed among the various institutions and organization that are a part of the corridor is not specified. There is a requirement that 15 percent of the funds going to the corridor be spent on tobacco related research.

**The Council of Michigan Foundations**, incorporated in 1975, is required to spend the monies appropriated by the proposal to support local community efforts to address youth and senior needs.

**The Nurse Scholarship Program** funds are to be used for scholarships for eligible resident students enrolled or accepted in a degreed nursing education program which meets the requirements of law (Act 368 of 1978, M.C.L. 333.17241). No specific basis for the distribution of these funds to individuals or nursing education institutions is included in the proposal.

### Senior Citizen Prescription Drug Assistance Fund:

**The Elder Prescription Drug Program** is established as the Elder Prescription Insurance Program (EPIC) by Act 499 of 2000 and is administered by the

Michigan Department of Community Health. FY2003 appropriations for EPIC total \$145.0 million, \$30.0 million of which is from the existing Tobacco Settlement Trust Fund. Provision is made in the FY2003 Department of Community Health appropriations act that an additional \$20.0 million may be transferred to EPIC from tobacco settlement fund balances if the state budget director certifies that the federal funds appropriated to that program are unavailable and that sufficient tobacco settlement revenue is available to finance this appropriation.

#### 4. Annual report

Recipients of funds must file an annual report with the Auditor General itemizing their expenditures. The Auditor General is to prepare an annual report itemizing the manner in which the tobacco settlement revenue is appropriated and expended making the report available to the public on request.

#### 5. No effect on state spending

The proposal contains language that would circumscribe the way future legislative appropriations to recipients of the tobacco settlement funds that are also Medicaid providers can be determined. It states that “expenditures from all sources [not defined in the proposal] for hospitals and other health care services pursuant to M.C.L. 400.1, et. seq., the Medicaid program, shall not be reduced as a result of the allocation of funds from this section”. Provision is made for

adjustments due to: a change in the Federal matching rate; changes in the number of beneficiaries; and, changes in the types of Medicaid enrollees.

Because some of those that would receive funds under the proposal are Medicaid providers, it could be possible for the state to reduce Medicaid payments in recognition of the funds made available by the proposal. For this reason, the proposal contains a non-supplant provision that prohibits the state from reducing the relative amount that Medicaid providers received in FY2001. The proposal requires that each group of Medicaid providers (hospitals, nursing homes, hospices and nurse practitioners) receive the same or greater ratio of state revenues in each subsequent year as they did in 2001. The ratio is to be adjusted each year to account for changes in the Federal matching amount for Medicaid and for changes in the number and type of Medicaid eligible persons. According to preliminary analysis by the Office of the State Budget, the FY2001 figures show that the percent of total spending from state sources (\$24.7 billion) represented by each group is: non-profit hospitals 0.8 percent; nursing homes 1.9 percent; licensed hospices 0.04 percent; and nurse practitioners 0.004 percent.

If total state spending is reduced from one year to the next, the amount required for these four Medicaid providers could be reduced proportion-

ately. If overall spending is increased, but all of it takes place in non-health related areas, education for example, appropriations to these providers would have to be increased to maintain the ratio.

The proposal also provides that “state funds [not defined in the proposal], from whatever source, appropriated for tobacco prevention, education, reduction or cessation; cancer, cardiovascular disease or stroke prevention, education or control; or lung disease programs, or school-linked health centers or adolescent health care clinics, shall not be reduced or otherwise affected ... and the legislature shall make expenditures for each of these programs respectively at an amount equal to or greater than the amounts appropriated in fiscal 2001”. The Office of the State Budget has tentatively identified these amounts for FY2001 as: tobacco prevention, \$4,895,100; cancer prevention, \$8,134,100; and school-linked health centers, \$3,742,300.

#### 6. Self-executing

The amendment would be self-executing. It permits enabling legislation to be adopted but stipulates that no law shall limit or restrict the application of the section. It also provides that should any part of the new section be held unconstitutional, the remainder of the section would remain in force. All existing laws that are inconsistent with the new section would be abrogated.

# CRC Memorandum

## Issues

### Constitutional Issues

Most constitutional scholars hold that amendments to constitutions should be as general and brief in nature as practicable and that legislation should provide the detail necessary to implement them.

Proposal 02-04 contains 1,354 words and reads like statutory law. Article II, Section 9 of the Michigan Constitution provides a means by which the people can propose, enact and repeal statutes. The proposal might have been offered as a statutory initiative petition except that it contains provisions that would not be constitutional as statute: It denies the Governor the line-item veto (Article V, Section 19); and, it mandates the expenditure of funds (Article V, Section 20).

### Public Policy Issues – Tobacco Related

**The Purpose of Tobacco Settlement Revenues.** There are two views of the ways tobacco settlement funds should be used.

One is that the funds are being paid by tobacco companies because of the illnesses and deaths caused by their products and the monies should be used to improve the health of Michigan residents.

The other is that payments represent compensation for the costs Michigan has incurred or will incur in its Medicaid program because of the effects of smoking - money that otherwise would have been available for spending on any state purpose whether for

health or not. The Master Settlement Agreement does not restrict the use of tobacco settlement money to any particular purpose.

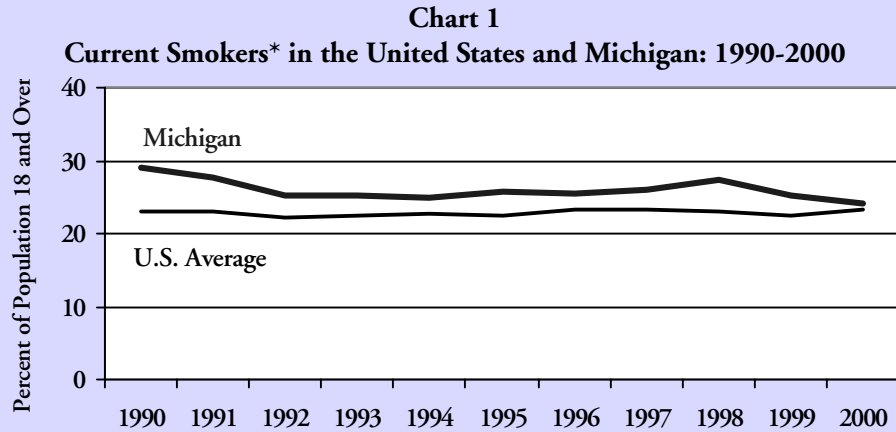
### Role of the State of Michigan in Reducing the Use of Tobacco.

In 1964, the Surgeon General released a report of an advisory committee that determined there was a causal relationship between smoking and certain cancers including lung cancer. Since that time the Public Health Service has worked to reduce smoking. States have also engaged in efforts to reduce smoking and impact the use of tobacco. The Office of the State Budget has identified line item appropriations for FY2001 that address these efforts (See **Table 4**). They total \$27.7 million.

**Table 4**  
**Fiscal Year 2002 State Anti-Tobacco Spending - All Sources**

<u>Item</u>	<u>Amount (thousands)</u>
Cancer Prevention and Control Program	\$ 1,024.5
Cardiovascular Disease Prevention Program	1,116.8
Council of Michigan Foundations	1,000.0
Drug Abuse Resistance Education (DARE)	40.3
Zero to Three Program & Before/After School Program	120.0
Education and Prevention Programs for Asthma & Stroke	475.0
Juvenile Intervention Strategies & Youth Crime Prevention	333.9
Maternal Support Services & Maternal/Infant Health Advocacy Services	434.3
Wayne State University American Legacy Grant	100.0
Michigan Tobacco Prevention and Cessation Phone Line	200.0
Office of Drug Control and School Aid Fund - K through 12	6,703.4
School Health and Education Program	1,780.8
Smoking Cessation Rx & OTC Products for Medicaid	1,080.0
Smoking Cessation Rx Products for State Employees & Retirees	237.0
Smoking Prevention Program in the Department of Community Health	8,300.0
Smoking Prevention Media Campaign	1,265.3
Substance Abuse	2,700.0
Tobacco Tax Collection & Enforcement	<u>810.0</u>
<b>Total:</b>	<b>\$27,721.3</b>

Source: Office of the State Budget



\*All respondents 18 and older who have ever smoked 100 cigarettes in their lifetime and reported smoking every day or some days. Denominator includes all survey respondents except those with missing, don't know, and refused answers.

Source: National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention.

**CDC Recommended State Funding for Tobacco Prevention.** In 1999, the Centers for Disease Control published guidelines for state spending for comprehensive tobacco control programs. It indicated that states with populations over 7 million should spend between \$5 and \$16 per capita to fulfill best practices in 9 areas resulting in a range of \$54.8 million to \$154.6 million for Michigan. Considerable debate has occurred over figures used to show the amount of anti-tobacco spending. **Table 4** contains those items identified by the State Budget Office. The Centers for Disease Control show a FY2002 amount of \$6,344,605 for Michigan in their publications.

**Effectiveness of Tobacco Control Programs.** There is broad consensus on the goals of anti-smoking efforts and there is evidence that at least some anti-smoking campaigns, notably in California and Massachusetts, have had a positive effect. Moreover, there may be long-term savings to Medicaid if those programs are effective. There remains, however, an ongoing debate regarding the cost-effectiveness of specific tobacco control programs.

**Legislative Oversight.** One of the advantages to legislative oversight of state programs is the ability afforded to review and assess program effectiveness and adjust state appropriations accordingly. Proposal 02-04, by mandating appropriations to the Healthy Michigan Foundation, school-linked health centers, the Tobacco-Free Futures Fund, Inc., the Life Sciences Corridor, the Council of Michigan Foundations, and the nurse scholarship program makes legislative oversight irrelevant to funding decisions.

Medicaid appropriations for nonprofit hospitals, licensed nursing homes, licensed hospices and nurse practitioners are exempt from any reduction in the share of state revenues each had for FY 2001 while physicians, dentists, managed care organizations, pharmacies, home health, ambulance services and other Medicaid providers are not.

**Number of Smokers in Michigan.** According to the Behavioral Risk Factor surveillance system of the Center for Disease Control, the percent of Michigan residents who are aged 18 and older and who smoke was 24.1 percent in 2000 compared with a na-

tional average of 23.2 percent. **Chart 1** shows data for the years 1990-2000. The Department of Community Health reports that preliminary figures from Michigan's Youth Survey show that 27.6 percent of ninth through twelfth graders smoked in 2001. This compares with 38.2 percent in 1997 and 28.0 percent as the 2000 national average.

### Public Policy Issues – Financial

**Constitutionally Dedicated Funds.** The Michigan Constitution dedicates certain revenues to specific purposes. A portion of the sales tax must be placed in the School Aid Fund and another part of the sales tax must be distributed to local units of government. Fuel taxes must be used for transportation. Proposal 02-04 differs from these and others in that it mandates specific appropriations to non-governmental organizations and individuals.

**Securitization of Tobacco Settlement Revenue.** Some states, facing severe budget problems have issued bonds secured by future receipts from the tobacco settlement to gain current income to assist in avoiding deficits

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and/or as “bridge money” while the state identifies how it wants to reconcile program demands with expected income. Adoption of Proposal 02-04 would preclude Michigan from adopting this approach.

**Audit.** Fund recipients would be required to submit an itemized expenditure report to the Auditor General. It would be possible for the Auditor General to prescribe the form in which information is to be provided and the basis on which the information has been independently validated.

**State Oversight.** The proposal mandates that funds be used to improve the quality of health of Michigan residents. Absent the ability of the Legislature and Governor to influence the flow of monies through the appropriation process, it could fall to the State Treasurer to determine whether a given organization or individual was entitled to continued funds if they were not used properly.

**Auditor General.** The Constitution provides that the auditor general “shall

conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions and agencies, authorities and institutions of the state established by the constitution or by law, and performance post audits thereof”. The naming of specific organizational entities in the constitution could result in their being “de facto” state agencies and therefore subject to full review by the auditor general. Another view is that this would not be the case. Without addressing this question, the auditor general has written that the proposal “does not call for any audit procedures or critical analysis to be performed, or for any opinions to be rendered by the auditor general. In summary, the amendment calls for a simple accounting, and does not provide for any meaningful oversight by the auditor general”.

### Public Policy Issues – Governance

**Public Funds for Private Purposes.** The Constitution now requires a 2/3 vote in both houses of the legislature to appropriate state funds for private use.

Attorney General Opinion 6225 of 1984 provides in part that “what constitutes a public purpose for the expenditure of public money has been left to the determination of the Legislature which may not be reversed by the courts except where the determination is palpably and manifestly arbitrary and incorrect.” The proposal would exempt recipients of the tobacco settlement funds from this Legislative determination.

**Not-for-Profit Organizations.** Three organizations that are not Medicaid providers or governmentally established or regulated entities would receive tobacco settlement funds under the proposal. They are: the Healthy Michigan Foundation; the Tobacco-Free Futures Funds, Inc; and the Council of Michigan Foundations.

These would be the first private organizations designated by the Constitution as recipients of state appropriations.