

**FIRST ENGROSSMENT  
with House Amendments**

Sixty-first  
Legislative Assembly  
of North Dakota

**ENGROSSED SENATE BILL NO. 2063**

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide an appropriation for defraying the expenses of the state  
2 department of health for the development, implementation, and administration of the  
3 comprehensive tobacco prevention and control plan; to provide for a transfer; to provide for  
4 reports to the budget section; to amend and reenact sections 23-42-01, 23-42-02, 23-42-05,  
5 23-42-06, 23-42-07, and 54-27-25 of the North Dakota Century Code, relating to the  
6 comprehensive tobacco prevention and control plan and advisory committee and the tobacco  
7 settlement trust fund; to repeal sections 23-42-01, 23-42-02, 23-42-03, 23-42-04, 23-42-05,  
8 23-42-06, and 23-42-07 of the North Dakota Century Code, relating to the tobacco prevention  
9 and control executive committee and advisory committee; to provide an effective date; to  
10 provide for retroactive application; and to declare an emergency.

11 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

12 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the  
13 funds as may be necessary, are appropriated out of any moneys in the tobacco prevention and  
14 control trust fund, not otherwise appropriated, to the state department of health for the purpose  
15 of defraying the expenses of the comprehensive tobacco prevention and control plan, for the  
16 biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
17			
18			
19 Salaries and wages	\$0	\$252,128	\$252,128
20 Grants	<u>0</u>	<u>12,629,872</u>	<u>12,629,872</u>
21 Total special funds	\$0	\$12,882,000	\$12,882,000
22 Full-time equivalent positions	0.00	2.00	2.00

23 **SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the  
24 tobacco prevention and control trust fund, not otherwise appropriated, the sum of \$62,403, or

1 so much of the sum as may be necessary, to the state department of health for the purpose of  
2 defraying the expenses of the tobacco prevention and control advisory committee, developing  
3 the comprehensive tobacco prevention and control plan, and contracting with a consultant to  
4 facilitate the development of the comprehensive plan, for the period beginning January 1, 2009,  
5 and ending July 1, 2009.

6 **SECTION 3. COMMUNITY HEALTH TRUST FUND - TRANSFER.** The office of  
7 management and budget shall transfer the sum of \$4,100,000 from the tobacco prevention and  
8 control trust fund to the community health trust fund, for the biennium beginning July 1, 2009,  
9 and ending June 30, 2011.

10 **SECTION 4. REPORTS TO THE BUDGET SECTION.** The state department of health  
11 shall report to the budget section quarterly on the implementation of the comprehensive  
12 tobacco prevention and control plan and outcomes achieved, for the biennium beginning July 1,  
13 2009, and ending June 30, 2011.

14 **SECTION 5. AMENDMENT.** Section 23-42-01 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **23-42-01. Definitions.** As used in this chapter:

- 17 1. "Advisory committee" is the nine-member tobacco prevention and control advisory  
18 committee ~~responsible to develop the comprehensive plan.~~
- 19 2. "Comprehensive plan" means a comprehensive statewide tobacco prevention and  
20 control program ~~that~~ developed by the state department of health which is  
21 consistent with the centers for disease control and prevention best practices for  
22 comprehensive tobacco prevention and control programs and does not duplicate  
23 the work of the community health grant program created in chapter 23-38.
- 24 3. ~~"Executive committee" means the three member committee selected by the~~  
25 ~~advisory committee and charged with implementation and administration of the~~  
26 ~~comprehensive plan.~~
- 27 4. "Tobacco prevention and control fund" consists of all principal and interest of the  
28 tobacco prevention and control trust fund established by section 54-27-25.

29 **SECTION 6. AMENDMENT.** Section 23-42-02 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1           **23-42-02. Tobacco prevention and control advisory committee - Membership -**  
2 **Terms - Duties - Removal.**

- 3           1. The advisory board consists of nine North Dakota residents appointed by the  
4           governor for three-year terms as follows:
- 5           a. A practicing respiratory therapist familiar with tobacco-related diseases;
  - 6           b. Four nonstate employees who have demonstrated expertise in tobacco  
7           prevention and control;
  - 8           c. A practicing medical doctor familiar with tobacco-related diseases;
  - 9           d. A practicing nurse familiar with tobacco-related diseases;
  - 10          e. A youth between the ages of fourteen and twenty-one; and
  - 11          f. A member of the public with a previously demonstrated interest in fostering  
12          tobacco prevention and control.
- 13          2. The governor shall select the youth and public member independently; the  
14          respiratory therapist from a list of three nominations provided by the North Dakota  
15          society for respiratory care; the four tobacco control experts from a list of two  
16          nominations per member provided by the North Dakota public health association's  
17          tobacco control section; the medical doctor from a list of three nominations  
18          provided by the North Dakota medical association; and the nurse from a list of  
19          three nominations provided by the North Dakota nurses association. The governor  
20          must make the appointments within three weeks of receiving the respective list of  
21          nominees. If the governor fails to make an appointment within three weeks, the  
22          association that provided the list of nominees shall select the committee member.  
23          In the initial appointments for the advisory committee, the governor shall stagger  
24          the terms of the members so that the terms of three members expire each fiscal  
25          year and that three members are appointed each year by June thirtieth.  
26          Accordingly, the governor's initial appointments, in some instances, must be for  
27          terms less than three years. The governor shall fill vacancies for the unexpired  
28          term as provided in this section.
- 29          3. No individual may serve more than two consecutive three-year terms. However,  
30          terms of less than three years are not considered in determining an individual's  
31          eligibility for reappointment.

- 1           4. A quorum of the advisory committee is required to conduct business, but the  
2           advisory committee may conduct a meeting with less than a quorum present. A  
3           quorum is a majority of the members of the committee. Any action taken requires  
4           a vote of the majority of the members present at the meeting.
- 5           5. The advisory board shall:
- 6           a. ~~Select the executive committee;~~
- 7           b. Fix the compensation of the advisory committee ~~and the executive~~  
8           ~~committee~~. However, compensation may not exceed compensation allowed  
9           to the ~~legislature~~ legislative assembly. Advisory ~~and executive~~ committee  
10          members are entitled to reimbursement for mileage and expenses as  
11          provided for state officers in addition to any compensation provided;
- 12          e. ~~b.~~ Develop Advise the state department of health on the development of the  
13          initial comprehensive statewide tobacco prevention and control program ~~that~~  
14          ~~includes~~, including support for cessation interventions, community and youth  
15          interventions, and health communication; and
- 16          e. ~~c.~~ Evaluate the effectiveness of the plan and its implementation as carried out  
17          by the state department of health and, before April first of each year, propose  
18          any necessary changes to the plan to the ~~executive committee~~ state  
19          department of health.
- 20          6. The governor may remove any member of the advisory committee for malfeasance  
21          in office, but the advisory committee is not subject to section 54-07-01.2.
- 22          7. No nomination to, or member of, the advisory committee ~~shall~~ may have any past  
23          or current affiliation with the tobacco industry or any industry, contractor, agent, or  
24          organization that engages in the manufacturing, marketing, distributing, sale, or  
25          promotion of tobacco or tobacco-related products.

26           **SECTION 7. AMENDMENT.** Section 23-42-05 of the North Dakota Century Code is  
27    amended and reenacted as follows:

28           **23-42-05. Development of the comprehensive plan.** The advisory committee shall  
29    ~~develop~~ advise the state department of health on the development of the initial comprehensive  
30    plan within one hundred eighty days of the initial meeting of the advisory committee. The  
31    comprehensive plan must be funded at a level equal to or greater than the centers for disease

1 control and prevention recommended funding level. Funding for the comprehensive plan must  
2 supplement and may not supplant any funding that in the absence of this chapter would be or  
3 has been provided for the community health trust fund or other health initiatives.

4 **SECTION 8. AMENDMENT.** Section 23-42-06 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **23-42-06. Conflict of interest.** No member of the advisory committee ~~or of the~~  
7 ~~executive committee~~ who has a direct and substantial personal or pecuniary interest in a matter  
8 before them may vote or take any action on that matter.

9 **SECTION 9. AMENDMENT.** Section 23-42-07 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **23-42-07. Audit.** At least once a biennium, the ~~executive committee~~ state department  
12 of health shall provide for an independent review of the comprehensive plan to assure that the  
13 comprehensive plan is consistent with the centers for disease control and prevention best  
14 practices. The ~~executive committee~~ state department of health shall report the results of that  
15 review to the governor and to the state health officer on or before September first in each  
16 odd-numbered year.

17 **SECTION 10. AMENDMENT.** Section 54-27-25 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 **54-27-25. Tobacco settlement trust fund - Interest on fund - Uses.**

20 1. There is created in the state treasury a tobacco settlement trust fund. The fund  
21 consists of the tobacco settlement dollars obtained by the state under  
22 subsection IX(c)(1) of the master settlement agreement and consent agreement  
23 adopted by the east central judicial district court in its judgment entered December  
24 28, 1998 [Civil No. 98-3778] in State of North Dakota, ex rel. Heidi Heitkamp v.  
25 Philip Morris, Inc. Except as provided in subsection 2, moneys received by the  
26 state under subsection IX(c)(1) must be deposited in the fund. Interest earned on  
27 the fund must be credited to the fund and deposited in the fund. The principal and  
28 interest of the fund must be allocated as follows:

29 a. Transfers to a community health trust fund to be administered by the state  
30 department of health. The state department of health may use funds as  
31 appropriated for community-based public health programs and other public

1 health programs, including programs with emphasis on preventing or reducing  
2 tobacco usage in this state. Transfers under this subsection must equal ten  
3 percent of total annual transfers from the tobacco settlement trust fund of  
4 which a minimum of eighty percent must be used for tobacco prevention and  
5 control.

6 b. Transfers to the common schools trust fund to become a part of the principal  
7 of that fund. Transfers under this subsection must equal forty-five percent of  
8 total annual transfers from the tobacco settlement trust fund.

9 c. Transfers to the water development trust fund to be used to address the  
10 long-term water development and management needs of the state. Transfers  
11 under this subsection must equal forty-five percent of the total annual  
12 transfers from the tobacco settlement trust fund.

13 2. There is created in the state treasury a tobacco prevention and control trust fund.  
14 The fund consists of the tobacco settlement dollars obtained by the state under  
15 section IX(c)(2) of the agreement adopted by the east central judicial district court  
16 in its judgment entered December 28, 1998 [Civil No. 98-3778] in State of North  
17 Dakota, ex rel. Heidi Heitkamp v. Philip Morris, Inc. Interest earned on the fund  
18 must be credited to the fund and deposited in the fund. Moneys received into the  
19 fund are to be administered by the ~~executive committee~~ state department of health  
20 for the purpose of creating and implementing the comprehensive plan provided for  
21 under chapter 23-42. If in any biennium, the tobacco prevention and control trust  
22 fund does not have adequate dollars to fund a comprehensive plan, the treasurer  
23 shall transfer money from the water development trust fund to the tobacco  
24 prevention and control trust fund in an amount equal to the amount determined  
25 necessary by the ~~executive committee~~ legislative assembly to fund a  
26 comprehensive plan.

27 3. Transfers to the funds under this section must be made within thirty days of receipt  
28 by the state.

29 **SECTION 11. REPEAL.** Sections 23-42-03 and 23-42-04 of the North Dakota Century  
30 Code are repealed.

1           **SECTION 12. REPEAL.** Sections 23-42-01, 23-42-02, 23-42-05, 23-42-06, and  
2 23-42-07 of the North Dakota Century Code are repealed.

3           **SECTION 13. EFFECTIVE DATE.** Section 12 of this Act becomes effective July 1,  
4 2017.

5           **SECTION 14. RETROACTIVE APPLICATION.** Section 2 of this Act is retroactive to  
6 January 1, 2009.

7           **SECTION 15. EMERGENCY.** This Act is declared to be an emergency measure.