

2009 SENATE EDUCATION

SB 2406

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2406

Senate Education Committee

Check here for Conference Committee

Hearing Date: February 3, 2009

Recorder Job Number: 8443, 8448

Committee Clerk Signature

Minutes:

Chairman Freborg opened the hearing on SB 2406. All members were present.

Senator Grindberg introduced the bill. With Measure 3 passing, we have an additional opportunity to craft legislation to receive maximum benefit from the tax dollars that are going to be used from the tobacco settlement. Section 1 talks about a qualified college savings plan for tobacco free students. The Bank of North Dakota would provide a \$1000 grant to any qualified 526 college savings plan. It is pretty straightforward. A parent needs to certify their child is tobacco free. Section 2 is the meat of the bill, regarding the funding which says the Tobacco Prevention and Control Advisory Committee in its development of a comprehensive plan shall include this in their plan. This bill is introduced to create more discussion as to the avenues allowable to encourage people not to smoke. He has a consistent anti smoking message. The bill is worthy of debate. If we can provide incentives for kids not to smoke, it is a bill we should consider. He distributed a handout with draft projections of draft projections.

Senator Bakke said she teaches middle school. She knows middle school parents often do not know when their children are smoking. How would this ever be enforced?

Senator Grindberg said parents would know if they spent the time and knowing there was the carrot. There have been a number of bills introduced to create more parental involvement which is not a bad thing.

Senator Taylor asked if the funding source would be the funds discussed in measure 3, the excess tobacco litigation.

Senator Grindberg said the advisory committee would take it into consideration.

Senator Taylor said the bill looks at \$9 million, what are the excess funds?

Senator Grindberg said hopefully we will get this bill to appropriations, where they will find out about the excess funds.

Senator Flakoll said in subsection 6 on page 1, if they are in violation, they return the \$1000, do they get to keep the interest?

Senator Grindberg said he doesn't know.

Representative Berg testified in favor of the bill. He distributed a packet of information. To answer Senator Flakoll's question, yes the \$1000 would be returned but not the interest. His best friend, his father, died of a stroke from smoking all his life 8 years ago so he understands the danger of tobacco. At the same time, his career has involved looking for solutions that have an impact. He recapped measure 3 and his interpretation of its requirements and he talked about his idea for a solution. The first 3 pages of the handout talk about the legislative role and the impact of measure 3 passing. The top of page 2 is the essence of what is going on. The challenge we have in this legislative assembly is determining what we will be appropriating money for. The measure set out an amount. When we had the tobacco lawsuit, our Attorney General's office acted as a key player. After 15 years, they are reimbursing the states that played a key role in winning the lawsuit. Part of his contention is through that period we spent general fund dollars to support the effort in the lawsuit. As this money comes

back, it is money that goes to the people of North Dakota. They are projecting it to be an additional \$6 million per year or an additional \$12 million per biennium. This is over and above our current level of spending. There are decisions that have to be made this legislative session. The other component of the bill is in appropriations. He would request if this committee sees this issue worthy of more debate that it be rereferred to appropriations. Page 4 is the comprehensive tobacco prevention and cessation plan. He likes the goals of the plan. He believes the legislature is the best place to come up with creative solutions. We are the number one state in the country in terms of financial soundness, we have the top students, we have some of the healthiest people and it's because we are smart and creative. One of the rubs is having someone dictate to us the level of spending. That decision has been made so we know we are going to spend the \$9 million. On page 6 are best practices in North Dakota.

He challenges the thinking that the more we spend and the longer we do it, the better success we have in controlling smoking. No one spends more than the District of Columbia on K – 12 education and yet they rank 51st in terms of performance. Clearly money is critical to change but so are innovative, powerful ideas. Page 7 talks about 10% of the funds to be spent on monitoring to ensure the goals are met. If not one student ever started using tobacco, we would eliminate our tobacco problems. Our successes in our policies have been where we have created a public/private partnership. This bill would allow any child under the age of 5 to set up a 529 program that would be called the tobacco free scholarship, if their parent or guardian or someone put \$500 in, the state would put \$1000 so they would start out with \$1500. If that was all that was ever done, they could have \$6000 - \$12,000 at the age of 18. He reviewed another program with the Bank of North Dakota matching \$300 in a college savings plan for families with income less than \$80,000 per year. If the income is under \$40,000 per year, the Bank of North Dakota will do the \$300 match three times in a row. This

could be a powerful thing. Grades 5 – 8 are critical years. What if every teacher taught on the basis of this program and all North Dakota children have the opportunity for a college education and being tobacco free is part of the deal. The parent would have to agree that the money would be given back if the child uses tobacco. This would weaken peer pressure. It would create a culture in the schools with some meat behind it, using tobacco would cost them \$1000. He explained the 529 program.

Senator Flakoll asked if he is looking for the long term secondary effect. Studies have shown that people with higher levels of education tend to lead healthier lifestyles. By providing more educational opportunities, there would be less chance of taking up bad habits.

Representative Berg said he doesn't know the statistics. If we do this little thing now, in 18 years things will change. Out of the box ideas are difficult to accept sometimes but we have plenty of time left in the session. We could be a model for the country.

Pat McGeary, member of the Tobacco Prevention and Control Executive Committee, testified against the bill. See written testimony.

Rosellen Sand, retired from the Attorney General's office, testified against the bill. See written testimony. These funds are being received by North Dakota because North Dakota put in a greater effort than other states and we benefitted by millions of dollars because of that. We also received moneys for our attorney fees and since we did all the work in house, that money came to the state. At that time, she was working for \$65,000 per year. She was paid about \$250 for her work. We received a substantial benefit from their work and that money went into the state coffers. The strategic contribution fund was not in payment for the time put in, it was because of the work of the Attorney General's work. College is a very important thing and she wants to commend Representative Berg and Senator Grindberg. The supporters of measure 3 want to use proven methods, they don't want to be the trial case and spend good money after

bad. The CDC best practices are programs that are proven to work. That is what the voters told us we should implement. You would need a 2/3 majority of both houses to implement this. This bill flies in the face of measure 3.

Senator Taylor asked if it might be \$12 million per biennium.

Rosellen Sand said right now CDC best practices are about \$9.3 million. The Health Department and CDC are already providing some of that funding. The last number they gave to the subcommittee in Senate Appropriations, was about \$12.1 million but they are still in discussions with the Health Department about who is going to be paying for which portion so the number could move around a lot.

Chairman Freborg closed the hearing on SB 2406.

Senator Flakoll moved Do Pass on SB 2406 and Rerefer to Appropriations, seconded by Senator Lee.

Senator Bakke said this would be virtually impossible to monitor. It is not the way the citizens of our state intended the tobacco money be used and she will not support it.

Senator Taylor said with three little kids who he hopes will go to college, he would love to see the state contribute \$3000. He is not sure this is the intent of what folks voted on. If this is something the tobacco committee would like to take on, he would like to see them do it. He doesn't know that it should come from us in the legislature. For some of our lower income folks the \$500 match will be a real struggle. The Bank of North Dakota has done a lot of work promoting their \$300 match and from what he has heard, not many people are participating in it. Along with the inability to enforce provisions of the act, he thinks it is a noble idea but he can't support it now.

Senator Flakoll said he has a report from the CDC which is used as a reference by the organizers of the group that shows that higher levels of education correlate with lower incidence of smoking. There are several studies that support this notion.

Senator Freborg asked if the bill would work just as well if it didn't have anything to do with not smoking? We will never know what students are not smoking, certainly the parent is not going to report the student.

Senator Bakke said there are lots of proven, research based programs that work for deterring youth from smoking. That would be a better use of our money than this bill that will more substantially impact the number of kids that smoke.

Senator Lee said he is not going to support the bill. He is frustrated that the advisory group says they are only going to use research based programs, they have no interest in this, they are not going to try anything like this. That is disappointing because the most successful thing we have in our state in terms of cessation of tobacco is our Quit Line and that is 38% after 6 months and 34% after one year. The rest of these things that are criteria based and they are going to use and champion are less than 20% effective and that is where the money is going to be spent. It is disappointing that they won't even try or consider something that isn't a tried and true program that is minimally successful.

The motion failed 1 – 4.

Senator Taylor moved a Do Not Pass on SB 2406, seconded by Senator Bakke.

Senator Flakoll said it is unfortunate the group prefers something with a 20% success rate over something with a 3 fold decrease in tobacco usage.

The motion passed 4 – 1. Senator Taylor will carry the bill.

FISCAL NOTE
Requested by Legislative Council
01/27/2009

Bill/Resolution No.: SB 2406

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$19,500		\$19,500
Expenditures				\$8,913,000		\$8,913,000
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

BND to provide \$1,000 grant from Tobacco Prevention and Advisory Committee to a ND resident parent who contributes \$500 to any IRS 529 savings plan in the nation and signs agreement to ensure their child, born after Aug. 1, 2009 does not illegally purchase, possess, smoke, etc...tobacco in any form.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Vital Statistics on North Dakota resident births as provided by the North Dakota Department of Health show an average of 8,063 births per year over the past 10 years. The latest figures are from the year 2007 in which the actual number of births was 8,818. The Fiscal impact per legislation to the Tobacco Prevention and Advisory Committee during the 2009-2011 biennium is \$8,818,000 at 50 percent of eligible participants taking advantage of the opportunity(4,409 accts times \$1,000 times two years). If all 8,818 grants per biennium were placed with North Dakota's 529 College Savings Plan, College SAVE, and included the original \$500 to qualify for the matching grant, BND would receive approximately \$19,500 in administrative fees for the biennium.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Out of .85 basis points per \$1,000 in assets in a College SAVE account, BND receives .10 basis points for plan administration.

In a scenario where 50 percent of new resident births would account for matching grants to any 529 college savings plan in the nation, BND would receive administrative fees of \$19,500 per biennium if all 8,818 grants were placed with North Dakota's 529 College Savings Plan, College SAVE, and included the original \$500 to qualify for the matching grant.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Eligible recipients per biennium total 17,636 according to year 2007 vital statistics provided by the North Dakota Department of Health. Based upon 50 percent of this statistic, or 8,818 eligible participants, BND would be responsible for administrative and marketing functions at an estimated cost of \$95,000 a biennium which includes a 1/2 time FTE position.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

Name:	James Barnhardt	Agency:	Bank of North Dakota
Phone Number:	328-5882	Date Prepared:	01/30/2009

REPORT OF STANDING COMMITTEE

SB 2406: Education Committee (Sen. Freborg, Chairman) recommends DO NOT PASS
(4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2406 was placed on the
Eleventh order on the calendar.

2009 TESTIMONY

SB 2406

Tobacco Free Scholarships
Draft Projections

Investment	\$ 1,000.00
Parent Investment	<u>\$ 500.00</u>
Total	\$ 1,500.00

Option 1

Assume no additional money invested in the educational account.

Balance in 18 years 8% interest	\$6,300
Balance in 18 years 12% interest	\$12,900

Option 2

Assume parent or another person add's \$500/year to the educational fund.

Balance in 18 years 8% interest	\$25,025
Balance in 18 years 12% interest	\$40,700

2/3/09

Grindkey 2406



North Dakota Legislative Council

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STATE CAPITOL, 600 EAST BOULEVARD, BISMARCK, ND 58505-0360 (701) 328-2916 TTY: 1-800-366-6888

October 31, 2008

Honorable Rick Berg
State Representative
P.O. Box 3024
Fargo, ND 58108-3024

Dear Representative Berg:

This is in response to your request for information relating to initiated measure No. 3, which will be on the November 2008 general election ballot. You asked the following questions:

1. Does initiated measure No. 3 require the Legislative Assembly to appropriate funds to meet the United States Centers for Disease Control and Prevention's minimum recommended amount for a comprehensive tobacco control program for North Dakota?
2. Does initiated measure No. 3 include limits on staff compensation, amounts of loans that may be granted by the executive committee, or the duration of lease agreements; and does the measure prohibit the hiring of lobbyists or the making of political contributions to candidates or ballot measures?
3. What is the effect of the provision in initiated measure No. 3 which states that funds needed to implement a comprehensive tobacco control program should be taken from the state water development trust fund if the newly created tobacco prevention and control trust fund does not have sufficient money to pay for the plan with respect to trust fund revenues already appropriated by the Legislative Assembly?

BACKGROUND

Initiated measure No. 3 creates a Tobacco Prevention and Control Advisory Committee and requires that committee to develop an initial comprehensive plan within 180 days of the initial meeting of the advisory committee. The measure further provides that the comprehensive plan must be funded at a level equal to or greater than the Centers for Disease Control and Prevention's recommended level funding, and funding for the comprehensive plan must supplement and may not supplant any funding that in the absence of the measure would be or has been provided for the community health trust fund or other health initiatives. The measure also would amend North Dakota Century Code (NDCC) Section 54-27-25 to create a tobacco prevention and control trust fund consisting of the tobacco settlement dollars obtained by the state and interest earned on the fund. The measure provides that money received into the fund must be administered by the executive committee of the advisory committee for the purpose of creating and implementing the comprehensive plan.

Berg 2406 2/3/09

①

Question 1

Although initiated measure No. 3 directs a level of funding and requires money to be deposited in the tobacco prevention and control trust fund, the measure does not specifically appropriate that money. Article X, Section 12, of the Constitution of North Dakota provides that public money may be "disbursed only pursuant to appropriation first made by the legislature." The North Dakota Supreme Court has defined an "appropriation" as "the setting apart from the public revenue of a definite sum of money for the specified object in such a manner that the officials of the government are authorized to use the amount so set apart, and no more, for that object." *State ex rel. McDonald v. Holmes*, 19 ND 286 (1909).

Although initiated measure No. 3 places money into the tobacco prevention and control trust fund and provides a rather explicit directive to the Legislative Assembly to provide a certain level of funding for the comprehensive statewide tobacco prevention and control program, the measure does not appropriate the money in the fund. Only the Legislative Assembly may make a specific appropriation of the money placed in the tobacco prevention and control trust fund. The decision to appropriate the money and the determination of the amount of any appropriation ultimately lies with the Legislative Assembly.

Question 2

Initiated measure No. 3 authorizes the executive committee of the Tobacco Prevention and Control Advisory Committee to "employ staff and fix their compensation, accept grants, property, and gifts, enter contracts, make loans, provide grants, borrow money, lease property, provide direction to the state investment board for investment of the tobacco prevention and control fund, and take any action that any private individual, corporation, or any liability company lawfully may do except as restricted by the provisions of this Act." The ability of the executive committee to expend any funds pursuant to that grant of authority is limited to the availability of appropriated funds. The measure does not include any limitation on the duration of lease agreements; however, the continuation of a lease agreement likely will be subject to the availability of appropriated funds to continue the lease agreement. With respect to the authority of the executive committee to borrow money, it could be argued that the authority to borrow money without security is subject to the state debt limitations under Article X, Section 13, of the Constitution of North Dakota.

Although initiated measure No. 3 does not specifically authorize or prohibit the hiring of lobbyists or the making of political contributions and authorizes the executive committee to take any action that any other person may do except as restricted by the measure, other provisions of state law likely will be applicable with respect to lobbying and making political contributions.

North Dakota Century Code Section 54-05.1-02 exempts from the definition of a "lobbyist" an employee, officer, board member, volunteer, or agent of the state who is acting in that individual's official capacity. That section further provides that whether the individual is compensated has no relevance in the determination of whether the person is acting as a lobbyist. Thus, any individual who is a member of the executive committee or an agent of the executive committee likely would not fall within the definition of a lobbyist.

North Dakota Century Code Section 16.1-10-02 prohibits a person from using state property for a political purpose. A political purpose is defined as "any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a state office or a position taken in any bona fide news story, commentary, or editorial."

North Dakota Century Code Section 44-08-19 prohibits a public employee from engaging in political activities while on duty or in uniform. For the purposes of that section, political activities include any form of campaigning or electioneering. That section appears to be somewhat broader in scope than Section 16.1-10-02 in that it does not appear that political activities are limited to opposing or supporting a candidate and could be construed to include supporting or opposing ballot measures. Again, it is important to note that the money under the control of the executive committee may be spent only pursuant to legislative appropriation.

Question 3

The amendment of NDCC Section 54-27-25 within initiated measure No. 3 provides for the creation of the tobacco prevention and control trust fund and directs that tobacco settlement dollars obtained by the state under Section IX(c)(2) of the settlement must be credited to the fund. That section also provides that tobacco settlement dollars obtained under Section XI(c)(1) must be placed in the tobacco settlement trust fund and specifies how that fund must be allocated.

The measure provides that if in any biennium, the tobacco prevention and control trust fund does not have adequate dollars to fund the comprehensive plan, the State Treasurer is required to transfer money from the water development trust fund to the tobacco prevention and control trust fund to fund the comprehensive plan. Because the answer to the situation presented in the third question likely would be dependent upon the facts of the situation, we are unable to provide an answer to that question. However, under certain circumstances, it could be argued that NDCC Section 54-44.1-12 may require the director of the budget to make allotments of the funds. That section provides that if the director finds that the money and estimated revenues in a specific fund from which the appropriation is made are insufficient to meet all legislative appropriations from the fund, the director is required to allot the funds on a uniform percentage basis.

Please feel free to contact this office if you have further questions.

Sincerely,



John Bjornson
Counsel

JB/AC

MEASURE 3: COMPREHENSIVE TOBACCO PREVENTION AND CESSATION FOR NORTH DAKOTA

A WIN-WIN SOLUTION FOR NORTH DAKOTA'S HEALTH AND ECONOMY

A Special Report by the Campaign for Tobacco-Free Kids

September 22, 2008

The Campaign for Tobacco-Free Kids is an independent, non-partisan, nonprofit organization dedicated to preventing and reducing tobacco use and its harms, especially among youth. The Campaign does not receive or accept any government funding, nor does it receive or accept any funding from the tobacco industry. The Campaign works nationwide to support cost-effective state measures to reduce smoking and other tobacco use, save lives, and reduce smoking-caused harms and costs. For more information, see www.tobaccofreekids.org.

even counting the productivity declines from smokers being sick more often than other workers and taking cigarette breaks while on the job. One in five adults in North Dakota smoke, a rate that has basically remained unchanged for a more than a decade. More than one in five kids (21%) still smoke, and one in five high school males (20%) use spit tobacco. These North Dakota youth tobacco use rates are all higher than the rates nationwide.

Fully funding the state tobacco prevention program would reduce smoking and save lives. In 2007, the Institute of Medicine of the National Academies of Sciences, the President's Cancer Panel, and the CDC each issued separate landmark reports that concluded there is overwhelming evidence that comprehensive state tobacco prevention programs substantially reduce tobacco use and recommended that every state fund its program at the CDC-recommended level. In addition, there is overwhelming evidence from those states that have implemented programs consistent with CDC guidelines that those programs significantly reduce youth and adult smoking and related harms and save lives. Accordingly, it is clear that fully funding North Dakota's tobacco prevention and cessation efforts at the CDC-recommended level would, among other public health benefits:

- ***Reduce youth smoking by 12.7%***
- ***Stop 4,570 North Dakota kids from becoming addicted adult smokers***
- ***Prompt more than 3,500 current adult smokers to quit for good***
- ***Save more than 2,380 North Dakota citizens from dying prematurely from smoking***

Fully funding the state tobacco prevention program would strengthen the state's economy by increasing worker productivity and reducing future smoking-caused health care and smoking-caused other costs in the state by more than \$113 million. The smoking declines from funding North Dakota's tobacco prevention program at the CDC recommended level would translate directly into reductions in smoking-caused disease and disability, thereby increasing the health and productivity of the state's workforce and reducing government, business, and household smoking-caused costs. Using conservative, research-based estimates, the smoking declines from passing Measure 3 would lock-in more than \$113 million in future smoking-caused health expenditure reductions in the state, including more than \$11.9 in future cuts to state Medicaid program expenditures.

As further detailed in the full report, passing Measure 3 would be a double victory for the state. By working effectively to prevent and reduce smoking and other tobacco use in the state, it would not only improve public health and save lives but also save money and strengthen the economy.

Best Practices

North Dakota

2007

for Comprehensive
Tobacco Control
Programs

According to the Centers for Disease Control and Prevention (CDC), the recommended level of investment for tobacco prevention and control in North Dakota is \$9.3 million per year, or \$14.67 per capita.

Tobacco use is the single most preventable cause of death and disease in the United States.

- Half of all long-term smokers die prematurely from smoking-related causes.

In North Dakota, an estimated 900 adults are projected to die each year from smoking.

- For each person who dies, another 20 people are suffering with at least one serious tobacco-related illness.
- If current smoking rates among people younger than age 18 continue, an estimated 11,000 of these North Dakota youth are projected to die from smoking.

The economic impact of tobacco use is equally staggering.

- North Dakota spends approximately \$247 million each year in smoking-attributable medical expenses, including an estimated \$47 million on smoking-attributable Medicaid medical costs.
- North Dakota also loses an estimated \$190 million each year in lost productivity from an experienced workforce that dies prematurely. Additional costs occur each year in medical treatment and lost productivity as a result of exposure to secondhand smoke.

The more states spend on comprehensive tobacco control programs, the greater the reductions in smoking—and the longer states invest in such programs, the greater and faster the impact.

- Evidence-based statewide tobacco control programs that are comprehensive, sustained, and accountable have been shown to reduce the number of tobacco-related deaths and disease.



U.S. Department of Health and Human Services
Centers for Disease Control and Prevention
National Center for Chronic Disease Prevention and Health Promotion
Office on Smoking and Health

Best Practices

North Dakota

2007

for Comprehensive Tobacco Control Programs

In fiscal year 2006, North Dakota earned \$23.3 million in revenue from the sale of tobacco products, and was eligible to receive \$21.3 million from their legal settlement with the tobacco industry. Of the \$44.7 million North Dakota receives in revenue from their tobacco excise taxes and settlement, 21% would fund North Dakota's tobacco prevention and control program at the level of investment recommended by the CDC.

According to the Centers for Disease Control and Prevention (CDC), the recommended level of investment for tobacco prevention and control in North Dakota is \$9.3 million per year, or \$14.67 per capita.

I. State and Community Interventions

CDC recommends that North Dakota invest \$7.37 per capita annually in state and community interventions because multiple societal resources working together will have the greatest long-term population impact.

II. Health Communication Interventions

CDC recommends that North Dakota invest \$1.86 per capita annually in health communications because media interventions work to prevent tobacco use initiation, promote cessation, and shape social norms.

III. Cessation Interventions

CDC recommends that North Dakota invest \$3.52 per capita annually in tobacco cessation. Tobacco use treatment is an effective and highly cost-effective intervention.

IV. Surveillance and Evaluation

CDC recommends that North Dakota invest \$1.28, or 10% of tobacco control program costs, per capita annually in state surveillance and program evaluation because publicly financed programs should be accountable and demonstrate effectiveness.

V. Administration and Management

CDC recommends that North Dakota invest \$0.64, or 5% of tobacco control program costs, per capita annually in administration and management because complex, integrated programs require experienced staff to provide fiscal management, accountability, and coordination.

Reference: Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs—2007*. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, October 2007.

**Testimony
SB No. 2406
Senate Education Committee
February 3, 2009, 9:30 a.m.**

Good morning Chairman Freborg and members of the Senate Education Committee.

My name is Pat McGeary and I am a member of the Tobacco Prevention and Control Executive Committee. I am here to provide testimony in opposition to SB 2406. On November 4, 2008, the citizens in North Dakota voted to allocate the Strategic Contribution Fund dollars to the Tobacco Trust Fund and directed the funds to be used to fully fund a comprehensive CDC-based tobacco prevention and control plan for North Dakota. The use of funds for grants to qualified college savings plans on behalf of students who remain tobacco-free and as part of the comprehensive statewide tobacco prevention and control plan is not a best practice and goes against the law initiated by North Dakota voters.

The Tobacco Prevention and Control Advisory Committee has primary goals of preventing youth from starting to use tobacco, helping youth and adults to quit tobacco use, eliminating exposure to secondhand smoke and identifying and eliminating tobacco use disparities. Implementing evidence-based, statewide tobacco control programs that are comprehensive, integrated, sustained and accountable have been shown to reduce smoking rates, tobacco-related deaths, and diseases caused by smoking. These programs will prevent and accelerate declines in heart disease, lung diseases and disorders, and once again make lung cancer a rare disease. Each part of a comprehensive program must be based on science and there must be evidence that

they are effective to prevent, treat, and otherwise reduce tobacco use in our state. There is no evidence that funding college savings plans on behalf of students who remain tobacco free will reduce the prevalence of tobacco use in the state.

Furthermore, who will enforce this law and how will the state assure that the student has not illegally purchased, possessed, or used tobacco in any form while under the age of 18. Will the Bank of North Dakota be responsible to test students for the presence of nicotine? Will they conduct tests to measure cotinine levels by testing bodily fluids such as saliva, urine or blood samples? When a smoker stops smoking, it takes about five to seven days for the cotinine to clear his or her system. A nonsmoker exposed to secondhand smoke also has elevated cotinine levels, which will usually take five to seven days to clear his or her system, as well. That means a student who is a nonsmoker may test positive for nicotine if he or she is exposed to secondhand smoke, or a student who smokes could quit long enough to pass the cotinine test. How will we know the difference between those who smoke and those who are just near someone who smokes? If they use tobacco but are not caught, will they still get the funding? The Youth Risk Behavior Survey indicates that 21 percent of North Dakota youth in grades 9-12 are current smokers? For those under the age of 18, they are breaking the law. Under this bill, if they are not caught and convicted, they could still receive the funds.



This concludes my testimony. We urge your opposition to this bill to uphold the law enacted by North Dakota voters in November. Thank you.



**Testimony of Rosellen Sand - SB 2406
before the Senate Education Committee
February 3, 2009**

SB 2406 is not enforceable as it is currently written. Individuals who are under 18 are juveniles and are not “convicted” of violating state tobacco laws. Any violation is a juvenile offense adjudicated in juvenile court and in the records, the juvenile court may not have identified the offense as a tobacco violation. Juvenile records are sealed. Unless the committee has access to juvenile records, it has no means to assure compliance with the requirements of this bill.

SB 2406’s mechanism to prevent youth from using tobacco is not a scientifically proven best practice and is not likely to produce results.

SB 2406 does nothing to reduce adult smoking levels but would release money when the youth turn 18 – just when the tobacco companies are focusing on addicting them to tobacco.

SB 2406 attempts to change the definition of the comprehensive plan adopted by the people in Measure 3 at the last election. To make this change requires a two-thirds vote of each house of the Legislature.

SB 2406 does not state where the committee will get the money to pay students, does not state how much should be spent on this effort or how much should be spent on administering it. Because it thwarts the will of the people to spend the tobacco protection and control trust fund only on best practices, the Committee must have an additional appropriation of funding from some other source to implement this program. If the Legislature provides no alternative funding, and the intent is that the committee use tobacco prevention and control trust fund moneys to pay for the grants and administration, those funds will be depleted more quickly - increasing the possibility that the water resources trust fund moneys are diverted to tobacco prevention and control.

Finally, the bill provides no guidelines for the Committee to determine how and when to give a grant.