

1999 SENATE APPROPRIATIONS

SCR 4012

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR4012

Senate Appropriations Committee

Conference Committee

Hearing Date January 28, 1999

Tape Number	Side A	Side B	Meter #
1		X	3703-4455
2/2/99		x	0-300
Committee Clerk Signature <i>Kathy C. Kottenderock</i>			

Minutes:

SENATOR NETHING: Opened the hearing on SCR4012; A CONCURRENT RESOLUTION TO CREATE AND ENACT A NEW SECTION TO ARTICLE X OF THE CONSTITUTION OF NORTH DAKOTA, RELATING TO THE CREATION OF A HEALTH CARE PROGRAMS TRUST FUND.

MARV MUTZENBERGER: State Senator from District 32 to testify in support of SCR4012 (testimony attached which is the same as SB2250).

DARRELL ALLISON: (Meter 3936-4380) Representing himself, also a member of the Bismarck Tobacco Free North Dakota and a medical center chaplain. Testified with a personal story. I think we need to take some of the portion from the settlement from the folks who have had a measure of responsibility in causing the problem, put it back into helping find solution. Not only with the health care but also prevention.

Hearing was closed on SCR4012.

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2/2/99

SENATOR NETHING: Reopened the hearing on SB SCR 4012, and called for the motion on the amendment.

SENATOR HOLMBERG: Moved do pass amendment to SCR 4012

SENATOR NAADEN: Seconded the motion

**ROLL CALL: 13 YEAS; 1 ABSENT & NOT VOTING
MOTION ON AMENDMENTS TO SCR 4012 CARRIED**

Yeas: Nething; Naaden; Solberg; Lindaas; Tallackson; Robinson; Krauter; St. Aubyn; Grindberg; Holmberg; Kringstad; Bowman; Andrist
Absent & Not Voting: Tomac

SENATOR NETHING: Called for the motion on SCR 4012 as amended

SENATOR ANDRIST: Moved Do Not Pass SCR 4012 as amended

SENATOR BOWMAN: Seconded

SENATOR KRAUTER: Objected to the motion as it affects the constitution; therefor, it should be placed before the citizens of ND.

ROLL CALL: YEAS 9; NAYS 4; ABSENT & NOT VOTING 1

MOTION ON SCR 4012 AS AMENDED FAILED

Yeas: Nething; Naaden; Solberg; St. Aubyn; Grindberg; Holmberg; Kringstad; Bowman; Andrist

Nays: Lindaas; Tallackson; Robinson; Krauter

Absent & Not Voting: Tomac

CARRIER: SENATOR SOLBERG

SENATOR NETHING: Closed the hearing on SCR 4012

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4012

Page 1, line 13, replace "tobacco litigation settlement agreement" with:

"tobacco settlement dollars obtained by the state under sections IX (Payments) and XI (Calculation and Disbursement of Payments) of the master settlement agreement and consent agreement adopted by the district court in its judgment entered in State of North Dakota, ex rel. Heidi Heitkamp v. Philip Morris Inc., (East Central Dist. Ct., December 28, 1998)"

line 14, remove "entered as a result of litigation against tobacco industry companies and related entities"

after line 16, insert "enforcement of the terms of the master settlement agreement and consent agreement and"

Re-number accordingly

Date: 2/2/99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SCP 4012

Senate APPROPRIATIONS Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AMENDMENTS

Motion Made By Sen. Holmberg Seconded By Sen. Naaden

Senators	Yes	No	Senators	Yes	No
Senator Nething, Chairman	✓				
Senator Naaden, Vice Chairman	✓				
Senator Solberg	✓				
Senator Lindaas	✓				
Senator Tallackson	✓				
Senator Tomac					
Senator Robinson	✓				
Senator Krauter	✓				
Senator St. Aubyn	✓				
Senator Grindberg	✓				
Senator Holmberg	✓				
Senator Kringstad	✓				
Senator Bowman	✓				
Senator Andrist	✓				

Total (Yes) 13 No _____

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Am

Date: 2/2/99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SCR 4012

Senate APPROPRIATIONS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS AS AMENDED

Motion Made By Sen. Andrist Seconded By Sen. Bowman

Senators	Yes	No	Senators	Yes	No
Senator Nething, Chairman	✓				
Senator Naaden, Vice Chairman	✓				
Senator Solberg	✓				
Senator Lindaas		✓			
Senator Tallackson		✓			
Senator Tomac					
Senator Robinson		✓			
Senator Krauter		✓			
Senator St. Aubyn	✓				
Senator Grindberg	✓				
Senator Holmberg	✓				
Senator Kringstad	✓				
Senator Bowman	✓				
Senator Andrist	✓				

Total (Yes) 9 No 4

Absent 1

Floor Assignment Sen. Solberg

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4012: Appropriations Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). SCR 4012 was placed on the Sixth order on the calendar.

Page 1, line 13, remove "litigation" and replace "agreement" with "dollars obtained by the state under sections IX (Payments) and XI (Calculation and Disbursement of Payments) of the master settlement agreement and consent agreement adopted by the district court in its judgement entered in State of North Dakota, ex rel. Heidi Heitkamp v. Philip Morris Inc., (East Central Dist. Ct., December 28, 1998),"

Page 1, line 14, remove "entered as a result of litigation against tobacco industry companies and related entities"

Page 1, line 16, after "address" insert "enforcement of the terms of the master settlement agreement and consent agreement and"

Renumber accordingly

1999 TESTIMONY

SCR 4012

TESTIMONY ON SENATE CONCURRENT RESOLUTION 4012
BEFORE THE SENATE APPROPRIATIONS COMMITTEE
January 28, 1999

I am Attorney General Heidi Heitkamp and I am appearing to offer technical amendments to Senate Concurrent Resolution 4012.

Attached to my testimony is an amendment that implements the following changes:

1. Clearly identifies the judgment entered by the judge as the source of the funds and refers specifically to those portions of the settlement agreement which relate to the payment of the funds.
2. Provides that, in addition to the other uses, the funds can be used for enforcement of the terms of the agreement.

There are several reasons for the technical changes I offer today.

First, it is important to clearly identify the source of the funds and refer to the judgment and the portions in the agreement because the agreement contemplates that other manufacturers will join in at a later date under similar terms. The bill refers to a "tobacco settlement agreement entered as a result of litigation against tobacco industry companies and related entities." In fact some manufacturers were not involve in any litigation and did not agree to be bound by the terms of the agreement until 1999. Adding the suggested language will assure that all aspects of the agreement we entered in 1998 and the agreements with subsequent participating manufacturers will be covered by the terms of the bill.

Second, we must have the ability to enforce the agreement or we will not have any assurance that the tobacco companies will continue to make the scheduled payments or refrain from activities prohibited by the agreements including advertising and product distribution limitations. It seems most logical that payment for enforcement of the agreement should be made with tobacco moneys and not general taxpayers' dollars. A provision for expending funds for enforcement as appropriated by the Legislature is included in the attached amendment.

Third, a separate fund will strengthen our position with the federal government concerning Medicaid reimbursement. By way of background, the Health Care Finance Administration (HCFA) has indicated its intent to claim the tobacco moneys for Medicaid reimbursement. We are hopeful we will achieve a successful political resolution to this dispute in Congress. To further our legal argument that this is not recoupment of Medicaid dollars, it is my recommendation that the money be placed in a separate

fund. Although this bill creates a separate fund, it will not become effective unless and until the people act positively on it at the primary election in June, 2000. It is our understanding that we will receive moneys as early as May of 1999. To buttress our position that the funds are not Medicaid recoupment dollars I suggest that additional legislation be enacted to assure a place for the funds until the people have an opportunity to act on this proposed constitutional amendment.



NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Senator Marv Mutzenberger
District 32
205 East Arbor Avenue
Bismarck, ND 58504-5717



COMMITTEES:
Human Services
Government and
Veterans Affairs

TESTIMONY BEFORE THE SENATE APPROPRIATIONS COMMITTEE
Senate Bill 2250
January 28, 1999

4012

Chairman Nething, Vice Chairman Naaden, Members of the Committee on Appropriations: Good Morning. My name is Marv Mutzenberger and I am the Senator from District 32, which is most of Bismarck's south side.

All of us are aware of the historic settlement in which 46 states ended a four-year struggle with the tobacco industry over treatment costs that states have incurred for illnesses related to the use of tobacco products.

It now appears that these states will receive as much as \$196 billion from tobacco industries over the next 25 years, and that North Dakota's portion will be about \$717 million. We have been led to believe that the first payment of \$23.5 million, is expected in May of this year.

This is, indeed, an unusual, and an unexpected, new revenue source for our state. Although there will be more than one or two, proposals, for how to use, some of us think we need to legislate a prudent and sound stewardship plan for this income.

Just as gasoline taxes (for example) ought to be invested in roads, bridges, etc., we believe that the revenue stream from tobacco litigation ought to be connected to prevention of illnesses and promotion of wellness. Tobacco addiction and second-hand smoke costs the state of ND "mega bucks." Tobacco settlement funds should be directed into that arena.

Senate Bill 2250, and its companion bill, Senate Concurrent Resolution 4012, puts a plan in place for investing the litigation settlement money in a permanent trust fund, if and when it becomes available, and mandates the earnings of that fund to preventive and educational health related programs. (Folks who bend my ear, think this is fiscally prudent, sound, and very responsible).

SB 2250 proposes that the Legislative Assembly appropriate 10% of all money received from the tobacco litigation settlement, each biennium, to sound health related programs. It asks the North Dakota Health Council to present a spending plan to the Governor and the Legislative Council.

SB 2250 further, proposes to establish a Health Care Programs Trust fund to receive 90% of all money received each biennium from the tobacco litigation settlement. The principal of this fund is not to be spent.

SB 2250 further, proposes that the earnings of the fund be expended in two ways:

- 1) 25% of the earnings shall be reinvested in the fund to "inflation proof" the fund. (I don't know if 25 is the proper percentage. Attached to my testimony is a 25% scenario. It would be an absolute delight to have such a revenue stream available to finance health programs, and "free up" General Fund money for other North Dakota needs.)
- 2) 75% of the earnings shall be appropriated for health related programs. Again, it directs the North Dakota Health Council to submit a plan to the Governor and the Legislative Council for the best use of those revenues.

I will ask Legislative Council Staff to prepare amendments to include the 25% "inflation proofing" mandate.

Mr. Chairman, that concludes my testimony. I'd be pleased to try to answer any questions you have have at this time.

Respectfully,



Marv Mutzenberger
District 32 Senator

Tobacco Settlement

Senate Democratic Plan -- SB 2250

YEAR	Yearly Proceeds	Health Care Share - 10%	Trust Fund Share - 90%	Accumulative Fund Value	6% Earnings From Fund	Yearly Inflation Proofing	Health Care Funding
1999	\$8,784,330	\$878,433	\$7,905,897	\$7,905,897	\$474,354	\$118,588	\$997,021
2000	\$23,467,889	\$2,346,789	\$21,121,100	\$29,145,586	\$1,748,735	\$437,184	\$3,658,340
2001	\$25,341,550	\$2,534,155	\$22,807,395	\$52,390,164	\$3,143,410	\$785,852	\$4,891,712
2002	\$30,427,805	\$3,042,781	\$27,385,025	\$80,561,041	\$4,833,662	\$1,208,416	\$6,668,027
2003	\$30,715,771	\$3,071,577	\$27,644,194	\$109,413,651	\$6,564,819	\$1,641,205	\$7,995,191
2004	\$25,635,605	\$2,563,561	\$23,072,045	\$134,126,900	\$8,047,614	\$2,011,904	\$8,599,271
2005	\$25,635,605	\$2,563,561	\$23,072,045	\$159,210,848	\$9,552,651	\$2,388,163	\$9,728,049
2006	\$25,635,605	\$2,563,561	\$23,072,045	\$184,671,055	\$11,080,263	\$2,770,066	\$10,873,758
2007	\$25,635,605	\$2,563,561	\$23,072,045	\$210,513,166	\$12,630,790	\$3,157,697	\$12,036,653
2008	\$26,144,364	\$2,614,436	\$23,529,928	\$237,200,791	\$14,232,047	\$3,558,012	\$13,288,472
2009	\$26,144,364	\$2,614,436	\$23,529,928	\$264,288,730	\$15,857,324	\$3,964,331	\$14,507,429
2010	\$26,144,364	\$2,614,436	\$23,529,928	\$291,782,989	\$17,506,979	\$4,376,745	\$15,744,671
2011	\$26,144,364	\$2,614,436	\$23,529,928	\$319,689,661	\$19,181,380	\$4,795,345	\$17,000,471
2012	\$26,144,364	\$2,614,436	\$23,529,928	\$348,014,934	\$20,880,896	\$5,220,224	\$18,275,108
2013	\$26,144,364	\$2,614,436	\$23,529,928	\$376,765,085	\$22,605,905	\$5,651,476	\$19,568,865
2014	\$26,144,364	\$2,614,436	\$23,529,928	\$405,946,489	\$24,356,789	\$6,089,197	\$20,882,028
2015	\$26,144,364	\$2,614,436	\$23,529,928	\$435,565,614	\$26,133,937	\$6,533,484	\$22,214,889
2016	\$26,144,364	\$2,614,436	\$23,529,928	\$465,629,026	\$27,937,742	\$6,984,435	\$23,567,743
2017	\$26,144,364	\$2,614,436	\$23,529,928	\$496,143,389	\$29,768,603	\$7,442,151	\$24,940,889
2018	\$29,295,743	\$2,929,574	\$26,366,169	\$529,951,708	\$31,797,103	\$7,949,276	\$26,777,401
2019	\$29,295,743	\$2,929,574	\$26,366,169	\$564,267,153	\$33,856,029	\$8,464,007	\$28,321,596
2020	\$29,295,743	\$2,929,574	\$26,366,169	\$599,097,329	\$35,945,840	\$8,986,460	\$29,888,954
2021	\$29,295,743	\$2,929,574	\$26,366,169	\$634,449,957	\$38,066,997	\$9,516,749	\$31,479,822
2022	\$29,295,743	\$2,929,574	\$26,366,169	\$670,332,875	\$40,219,973	\$10,054,993	\$33,094,554
2023	\$29,295,743	\$2,929,574	\$26,366,169	\$706,754,037	\$42,405,242	\$10,601,311	\$34,733,506
2024	\$29,295,743	\$2,929,574	\$26,366,169	\$743,721,517	\$44,623,291	\$11,155,823	\$36,397,043
2025	\$29,295,743	\$2,929,574	\$26,366,169	\$781,243,508	\$46,874,610	\$11,718,653	\$38,085,532
	\$717,089,349	\$71,708,935	\$645,380,414		\$590,326,986	\$147,581,747	\$514,216,998

Tobacco Settlement Spread Sheet Addendum

Yearly Proceeds -- Amount of dollars per year to be forwarded to North Dakota from the tobacco settlement.

Health Care Share -- 10% of the settlement dollars to be used for health care purposes.

Trust Fund Share -- 90% of all settlement dollars to be put into a health care trust fund. Fund is to be administered by the state health council.

Accumulative Fund Value -- This column shows the yearly value of the trust fund, assuming a conservative 6% annual earnings from the trust fund and 25% of all earnings placed back in the fund.

6% Earnings from Fund -- The yearly amount of earnings from the fund, assuming a 6% return.

Yearly Inflation Proofing -- This column shows the dollar amount each year that would be placed back in the fund to help inflation proof the principle. Senator Mutzenberger will offer an amendment that requires 25% of the earning to be reinvested in the fund.

Health Care Funding -- The yearly amount available for health care funding. This column is the total of the 10% settlement health care share and 75% of the earnings from the fund.