MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

1305

2005 HOUSE APPROPRIATIONS

HB 1305

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1305
Release of Escrow Funds deposited by tobacco products
Manufacturers and provide a savings clause.

House Appropriations Full Committee

☐ Conference Committee

Hearing Date January 18, 2005

Tape Number	Side A	Side B	Meter #
1		X	#35.9 - 48.5
2	X		#0.0 - #5.8

Committee Clerk Signature Chris Alexander

Minutes:

Rep. Ken Svedjan, Chairman opened the hearing on HB1305 and the clerk read the bill title.

Mr. Jon Olson (meter Tape #1, Side B, #35.9) spoke on behalf of Phillip Morris and explained the "Amendment to the Allocable Share Release Provision of State Escrow Statutes - Status of State Legislation" (attached #11-9) and stated that 39 states have passed this. This amendment was designed to close the loophole relating to the release of escrow funds back to the "Non-Participating Manufacturers" (NPMs - or those companies who are not participating in the Master Settlement of the tobacco companies to the states) once they are deposited. To close this loophole would provide an equitable resource of potential recovery by the state in the event that there are claims made against these NPM funds. NPMs sold over 2 billion cigarettes nationally in 1997 and over 33.7 billion in 2003, which means the state would have received over $650 million more dollars if these states were participating in the Master Settlement. This amendment

is important because it would mean that a NPM would not be allowed to have their deposited funds returned before the states could make any claims against them and it would prevent these NPMs from enjoying an artificial advantage over those companies who have been paying into the Master Settlement with the states all along.

Rep. Francis J. Wald asked if this amendment would mean a windfall for North Dakota. (meter Tape #1, Side B, #41.6)

Mr. Olson answered that it would be more like and insurance claim that will keep moneys around longer in case there are any claims against them later.

Mr. Doug Barr from the Office of the Attorney General explained that the NPMs have to give money that sits in escrow to cover any claims brought against their companies. If no claims are brought, their moneys are returned to them. This amendment requires the moneys given by NPMs to be equitably balanced with those companies who are participating in the Master Settlement and does not allow for the release of these funds until after 25 years. As the law stands now, these companies have been depositing their funds and then getting them back out again after only 5 years.

Rep. Eliot Glassheim asked who could bring a claim against these companies and are there any plans for bringing a claim against these companies? (meter Tape #1, Side B, #48.5)

Mr. Barr answered that the state or individuals within the state could bring a claim. There are no plans as of now for a claim against these companies but now that people are aware that they can bring claims against them there very well could be in the future. What's happening now is that these companies are putting their moneys in and then literally taking them out in three days and closing up business so they are not around later when the state's may have claims to bring against

them. This amendment would stop this from happening and it would make sure that they are paying their proper amount into the funds based on their sales in the state.

Rep. Tom Brusegaard commented that having section 2 in the bills seems as if they anticipate being sued over this legislation, is that true?

Mr. Barr answered that there are many concerns over whether this amendment might effect the moneys we collect from the Master Settlement, but the original signators of the Master Settlement are all in support of this amendment and we would recommend that if you decide to pass HB1305 that you will do so without modification even within the savings clause.

Rep. Jeff Delzer (meter Tape #2, Side A, 2.0) asked if it was true that even if these companies only had sales in North Dakota they would be required to put the money into escrow as if they had been selling nationally? And is that the only amount that we can claim against them?

Mr. Barr answered that you could bring suit against a company for any amount, but the only funds that would be protected for you to collect would be those put in these funds.

Rep. Jeff Delzer asked if there was a chance that this amendment could be overturned by a federal court.

Mr. Barr answered that the a federal court of appeals has already upheld the constitutionality of this legislature but that it could always be interpreted differently and be overturned.

Rep. Francis J. Wald asked where the percentages come from when determining how much a company needs to pay?

Mr. Barr answered that the percentages are defined by the Master Settlement Agreement which is based on population. (meter Tape #2, Side A, #3.4)

Rep. Ken Svedjan, Chairman called for any further testimony on HB1305. Seeing none, hearing on HB1305 was closed.

Rep. Tom Brusegaard made a motion to vote a Do Pass HB1305.

Rep. Francis J. Wald seconded the motion.

Rep. Ken Svedjan, Chairman called for a roll call vote on the motion. HB 1305 passed with a count of 19 yeas, 0 nays, and 4 absent. Chairman Svedjan requested that Rep Brusegaard carry the HB1305 to the House Floor.

Date: 1-18-05
Roll Call Vote #: #1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1305

House Appropriations - Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DO Pass

Motion Made By Brusegaard Seconded By Wald

Representatives	Yes	No	Representatives	Yes	No
Rep. Ken Svedjan, Chairman	X		Rep. Bob Skarphol	X	
Rep. Mike Timm, Vice Chairman	X		Rep. David Monson	X	
Rep. Bob Martinson	AB		Rep. Eliot Glassheim	X	
Rep. Tom Brusegaard	X		Rep. Jeff Delzer	X	
Rep. Earl Rennerfeldt	X		Rep. Chet Pollert	X	
Rep. Francis J. Wald	X		Rep. Larry Bellew	X	
Rep. Ole Aarsvold	X		Rep. Alon C. Wieland	X	
Rep. Pam Gulleson	AB		Rep. James Kerzman	X	
Rep. Ron Carlisle	X		Rep. Ralph Metcalf	AB	
Rep. Keith Kempenich	X				
Rep. Blair Thoreson	X				
Rep. Joe Kroeber	X				
Rep. Clark Williams	X				
Rep. Al Carlson	AB				

Total (Yes) 19 No 0

Absent 4

Floor Assignment Brusegaard

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

Date: **January 18, 2005**
Roll Call Vote #: **1**

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1305

House Appropriations - Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken **DO PASS**

Motion Made By **Rep Brusegaard** Seconded By **Rep Wald**

Representatives	Yes	No	Representatives	Yes	No
Rep. Ken Svedjan, Chairman	X		Rep. Bob Skarphol	X	
Rep. Mike Timm, Vice Chairman	X		Rep. David Monson	X	
Rep. Bob Martinson	AB		Rep. Eliot Glassheim	X	
Rep. Tom Brusegaard	X		Rep. Jeff Delzer	X	
Rep. Earl Rennerfeldt	X		Rep. Chet Pollert	X	
Rep. Francis J. Wald	X		Rep. Larry Bellew	X	
Rep. Ole Aarsvold	X		Rep. Alon C. Wieland	X	
Rep. Pam Gulleson	AB		Rep. James Kerzman	X	
Rep. Ron Carlisle	X		Rep. Ralph Metcalf	AB	
Rep. Keith Kempenich	X				
Rep. Blair Thoreson	X				
Rep. Joe Kroeber	X				
Rep. Clark Williams	X				
Rep. Al Carlson	AB				

Total Yes **19** No **0**

Absent **4**

Floor Assignment **Rep Brusegaard**

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

REPORT OF STANDING COMMITTEE

HB 1305: Appropriations Committee (Rep. Svedjan, Chairman) recommends **DO PASS** (19 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). HB 1305 was placed on the Eleventh order on the calendar.

2005 SENATE APPROPRIATIONS

HB 1305

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1305

Senate Appropriations Committee

☐ Conference Committee

Hearing Date February 24, 2005

Tape Number	Side A	Side B	Meter #
1	a		2,840

Committee Clerk Signature

Minutes:

Vice Chairman Grindberg called the hearing on HB 1305 to order.

John Olson, Lobbyist, representing Altria Corporate Services, Inc., presented written testimony and testified in support of HB 1305. He indicated the purpose of HB 1305 was to close a loophole regarding previously enacted legislation where tobacco companies that refused to enter into master settlement agreement were required to place funds in an escrow account in the event another lawsuit resulted in litigation settlement. The loophole is that nonparticipating companies can obtain release of escrow funds. HB 1305 would close the loophole and not allow nonparticipating companies an early withdrawal.

Questions were raised as to whether other states are adopting this plan, who nonparticipating companies are, what money is not realized because of this, whether purpose of bill is to protect the market share, whether sales of the participating companies has decreased.

Doug Barr, Director, Civil Litigation, Office of Attorney General, testified on HB 1305. He indicated the original purpose of the litigation was to pay for the health costs resulting from tobacco use. He also reviewed what has transpired since the settlement. He indicated the concept behind this bill is to provide nonparticipating manufacturers have responsibility to cover the states interests in the event a judgment against a nonparticipating manufacturer is awarded which resulted in establishing an escrow account. Now these manufacturers secured release of these funds. The Attorney General's opinion is that this bill either get passed or killed and not modified.

Questions raised included the concerns that big 4 manufacturers enlisted states help to maintain market share, whether in best interest of state to have big 4 maintain market share, and how other states have handled this issue.

No further questions were asked.

Vice Chairman Grindberg closed the hearing on HB 1305

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1305

Senate Appropriations Committee

☐ Conference Committee

Hearing Date March 23, 2005

Tape Number	Side A	Side B	Meter #
1	a		3,302

Committee Clerk Signature

Minutes:

Chairman Holmberg opened the discussion on HB 1305.

Senator Grindberg moved a DO PASS, Senator Tallackson seconded. Discussion took place about concerns about the big three companies and maintaining 98% market share. A **roll call vote was taken resulting in 14 yes, 0 no and 1 absent. The motion carried. Senator Kilzer will carry the bill.**

Chairman Holmberg closed the discussion.

Date 3/23/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 1305

Senate SENATE APPROPRIATIONS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Grindberg Seconded By Tallackson

Senators	Yes	No	Senators	Yes	No
CHAIRMAN HOLMBERG	/		SENATOR KRAUTER	/	
VICE CHAIRMAN BOWMAN	/		SENATOR LINDAAS	/	
VICE CHAIRMAN GRINDBERG	/		SENATOR MATHERN	/	
SENATOR ANDRIST	/		SENATOR ROBINSON	/	
SENATOR CHRISTMANN	/		SEN. TALLACKSON	/	
SENATOR FISCHER	/				
SENATOR KILZER	/				
SENATOR KRINGSTAD					
SENATOR SCHOBINGER	/				
SENATOR THANE	/				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Kilzer Grindberg

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

REPORT OF STANDING COMMITTEE

HB 1305: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1305 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1305

House Apps
Full Cmtee

#11-9

HB 1305
1-18-2005
Mr Jon Olson
Phillip Morris

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
750 FIRST STREET NE · SUITE 1100
WASHINGTON, DC 20002
(202) 326-6056 (Tobacco Project) · (202) 349-1935 (Facsimile)
http://www.naag.org

Amendment to the Allocable Share Release Provision of State Escrow Statutes
Status of State Legislation

(Please Note: This chart is based on the most current information available to the NAAG Tobacco Project as of January 4, 2005. The actual status of these and other similar bills may not be properly reflected here. Please check with individual states for current status.)

	STATE	BILL STATUS
1	Alabama	Signed into Law
2	Alaska	Signed into Law
3	Arizona	Signed into Law
4	California	Signed into Law
5	Colorado	Signed into Law
6	Commonwealth of the Northern Mariana Islands	Signed into Law
7	Connecticut	Signed into Law
8	Delaware	Signed into Law
9	Georgia	Signed into Law
10	Hawaii	Signed into Law
11	Idaho	Signed into Law
12	Illinois	Signed into Law
13	Indiana	Signed into Law
14	Iowa	Signed into Law
15	Kentucky	Signed into Law
16	Louisiana	Signed into Law
17	Maine	Signed into Law
18	Maryland	Signed into Law
19	Massachusetts	Signed into Law
20	Michigan	Signed into Law

21	Montana	Signed into Law
22	Nebraska	Signed into Law
23	New Hampshire	Signed into Law
24	New Mexico	Signed into Law
25	New York	Signed into Law
26	Ohio	Signed into Law
27	Oklahoma	Signed into Law
28	Oregon	Signed into Law
29	Pennsylvania	Signed into Law
30	Puerto Rico	Signed into Law
31	Rhode Island	Signed into Law
32	South Dakota	Signed into Law
33	Tennessee	Signed into Law
34	Utah	Signed into Law
35	Vermont	Signed into Law
36	Washington	Signed into Law
37	West Virginia	Signed into Law
38	Wisconsin	Signed into Law
39	Wyoming	Signed into Law

THE ALLOCABLE SHARE AMENDMENT

The National Association of Attorneys General has adopted a resolution urging the enactment of the so-called Allocable Share Amendment to the State Escrow Statutes. This legislation, which has already been enacted in 39 of the 52 MSA jurisdictions, is essential to permit the MSA and the Escrow Statutes to function as intended. This legislation is expected to be considered in 2005 in all of the jurisdictions that have not yet adopted it and, in accordance with the Resolution, NAAG urges its enactment.

The issue: The tobacco Master Settlement Agreement of November 23, 1998 ("MSA") settled litigation brought by the States against the major tobacco companies. It imposed important public health restrictions on the advertising, promotion and marketing of cigarettes by Participating Manufacturers and it required Participating Manufacturers to make annual payments to the States to compensate the States for a portion of the health costs imposed on the States by cigarette smoking. The fundamental principle of the MSA was that cigarette companies should internalize at least a portion of the costs imposed on the States by the sale of their products.

The Parties recognized that these public health restrictions and payment obligations, imposed on Participating Manufacturers, would create opportunities for companies that did not join the MSA and hence were not subject to the public health requirements and did not make payments to the States to compensate them for health care costs imposed by their cigarettes. Accordingly, each of the States enacted an Escrow Statute requiring companies that declined to join the MSA to establish and fund an escrow account. The required per-cigarette escrow deposit is in an amount approximately equal to the per-cigarette annual payment of a Participating Manufacturer, and the deposits are held in escrow for 25 years. The escrow statute was intended to do two things:

- to provide a resource to ensure that a company could not simply impose the costs attributable to smoking on the States and become judgment-proof before the State could obtain a judgment in compensation for the health care costs imposed by that company, and;

-to prevent companies that do not join the MSA from thereby enjoying an artificial advantage over companies that were making payments to the States and observing the public health restrictions of the MSA.

The problem: As drafted and originally enacted by the MSA States, the Escrow Statutes contained a loophole that virtually nullified the purposes for which they were designed. Although the Statutes required Non-Participating Manufacturers ("NPMs") to make per-cigarette escrow deposits approximately equal to those of Participating Manufacturers, the loophole permitted many NPMs to receive a release (the "Allocable Share Release") of virtually everything they deposited in within a few days. Thus, the loophole permitted NPMs to avoid keeping any significant amount of money in escrow. As a result, the State did not have security for a claim against such companies and such

companies enjoyed a windfall opportunity to increase their sales at the expense of both the State and the companies that adhered to the MSA.

As such companies have increased their sales, the number of cigarettes sold outside the public health restrictions of the MSA has sharply increased. Cheap cigarettes, attractive to youth smokers, have flooded the market, undercutting the essential purposes of the MSA. In 1997, the number of cigarettes sold nationwide by companies that did not join the MSA was less than 2 billion. In 2003, such companies sold 33.7 billion cigarettes. Moreover, the States received no MSA payments for cigarettes sold outside the MSA. In 2003, the States would have received over $650 million more had those 33.7 billion cigarettes been sold by companies subject to the MSA.

The solution: Once it became clear that the Escrow Statutes contained a loophole that nullified their basic purpose, the States moved to close the loophole by developing and enacting legislation, the Allocable Share Amendment. The Allocable Share Amendment still ensures that an NPM will never have to place more money in escrow than it would have to pay under the MSA, but it prevents such companies from enjoying the windfall releases they previously received. Under the statute as amended, NPMs are required to put into escrow, and keep in escrow, the same amount per-cigarette that Participating Manufacturers pay to the States. NPMs retain an advantage in that they get the interest on the funds in escrow on a current basis and get a return of the funds if the State does not settle with them or obtain a judgment against them within twenty-five years.

Status of the legislation: The legislation has passed in 39 of the 52 MSA jurisdictions. Several of the jurisdictions in which it has not yet passed are those in which NPMs have most successfully taken advantage of the loophole and in which the beneficiaries of the loophole have the greatest political influence.

Talking Points

The loophole undercuts the public health purposes of the MSA.

Companies that do not join the MSA are not bound by the public health restrictions on their advertising, marketing, and promotion. Many of them engage in promotional practices that would be prohibited if they were part of the MSA. The number of cigarettes that are sold outside of such restrictions has grown by 1700% since the MSA was passed, largely as a result of this loophole.

The amendment will have a positive impact on public health.

Studies have repeatedly demonstrated that kids' demand for cigarettes is more price-sensitive than adults. By ensuring that NPM cigarette prices include some of the cost burden imposed on the State, this amendment will maintain the price of NPM cigarettes at a higher level and help discourage another generation of minors from becoming addicted to cigarettes. Moreover, the amendment will preserve the public health gains of the MSA by ensuring that NPMs – who are not subject to the marketing

and advertising restrictions in the MSA – are not able to gain market share through unfair competition.

The loophole costs the States hundreds of millions of dollars every year.

Enactment of the proposed change to the Model Act is necessary to avoid hundreds of millions of dollars in losses to the States' tobacco payments under the MSA. NPMs that get a windfall because of the loophole make no payments to the States and their sales displace sales by companies do make such payments. Moreover, NPMs that get a windfall because of the loophole do not have to comply with the public health requirements of the MSA. The loophole gives companies an incentive to stay out of the MSA and it deprives the States of hundreds of millions of dollars in payments.

The loophole deprives the States of the protection the Escrow was designed to provide and disadvantages Participating Manufacturers.

Participating Manufacturers under the MSA make payments to the States based on their nationwide sales. For 2004, the payment is about 2 cents per cigarette. The States share in the payments in accordance with fixed percentages, known as Allocable Shares.

By contrast, under each State's Model Statute, NPMs make escrow deposits *only* on their cigarettes sold in that State. The deposits are designed to be the same as the payments that would be made on an equivalent number of cigarettes under the MSA if the NPM had become a Participating Manufacturer. The loophole that this legislation seeks to close gives some NPMs an immediate release of nearly all of those deposits. Ironically, the more concentrated a NPMs sales are in a particular State, the greater the release to that NPM, and the fewer the funds that are available to protect the State.

Most States have Allocable Shares of two percent or less. Under the current law, consider an NPM that sells 100 million cigarettes—all of them in a state whose allocable share of MSA payments is two percent. Under the current statute, that NPM would be entitled to an immediate release all but two percent of its escrow deposit. Under this example, the NPM would put $2 million in escrow, but it would get back $1.96 million immediately, leaving only $40,000 in escrow. This is not enough to ensure that the State can recover if it should bring an action for the damage done by the cigarettes the NPM sold there. Moreover, it gives the NPM an unfair advantage over Participating Manufacturers who sell the identical number of cigarettes in that State. Participating Manufacturers must pay the full $ 2 million to the States.

As a result the States lose money and are left unprotected, the NPM gets an unfair advantage, and companies have a disincentive to join the MSA. Instead of creating a "level playing field," NPMs are rewarded for staying out.

The problem is real and not theoretical.

The problem is very real. In many States, NPMs received back nearly everything they put into escrow. For example, in 2003 NPMs sold 2.3 billion cigarettes in Kentucky, which has an Allocable Share of 1.76%. Thirty-one NPMs made escrow deposits totaling $40,140,496, but of this amount $35,676,224.59 was released from escrow, pursuant to the release provisions of the Escrow Statute, leaving only $4,496,691, about 11.2%, on deposit as potential compensation for the Commonwealth of Kentucky. Thus, the amount left in escrow to protect Kentucky in the event it brings an action against an NPM for the health care costs imposed by its cigarettes in Kentucky is far less than what was intended to be in escrow. Kentucky was left unprotected and the companies that enjoyed the releases gained a large competitive advantage over other companies. To deal with this problem, Kentucky passed the Allocable Share Amendment.

The amendment protects NPMs from ever having to put in escrow more than what Participating Manufacturers pay under the MSA.

The amendment ensures that an NPM would never have to keep in escrow any more than the amount a Participating Manufacturer would have to pay under the MSA if it sold the same number of cigarettes. In other words, under the above example where the NPM sells 100 million cigarettes in a State, the NPM under the amendment would receive a release if its escrow deposit exceeded what would have been its MSA payment on these 100 million cigarettes.

NPMs were never promised this windfall.

Some NPMs claim that they are entitled to this windfall simply because they chose to operate as regional companies. The States never intended to give such a windfall to NPMs that operated regionally. There was never any intention to let any NPMs leave the States unprotected and reap massive profits at the expense of both their competitors and the States. The loophole is an unfortunate accident that needs to be closed.

The loophole disadvantages many small companies.

NPMs argue that the loophole is necessary to protect small companies but in fact it hurts small cigarette companies. There are almost fifty companies that are Participating Manufacturers. Most of them are small companies. Many of the NPMs are much larger than most Participating Manufacturers. Dozens of small companies support this bill. The loophole is particularly disadvantageous to small companies that join the MSA, choosing to comply with the public health restrictions in the MSA and to make payments to the States to compensate them for the damage their cigarettes cause.

It is not unfair to insist that companies that sell cigarettes should bear a portion of the costs their cigarettes impose on the States by settling and paying the States up front, or by posting escrow as security to cover such costs in the future.

Some NPMs claim that the Escrow Statute is unfair because, unlike the companies that were originally sued by the States, the NPMs "did nothing wrong" – i.e. they did not deceive the public about the health consequences of their products. The truth is that any cigarette, regardless of manufacturer, will have negative health consequences and costs, some of which are eventually borne by the States. Only five of the nearly 50 Participating Manufacturers ("PMs") in the MSA were sued by the States. Like the NPMs, the other PMs "did nothing wrong," but they have agreed to abide by the public health restrictions in the MSA and to compensate the States for a portion of the health care costs their products impose on the States. It is wrong to let these NPMs, whose products are equally addictive and deadly, enjoy a windfall and endanger the public health because they choose to take advantage of this loophole.

The Allocable Share Amendment is legally valid.

The constitutionality of the State Escrow Statute has been upheld by the courts. For example, in Star Scientific Inc. v. Beales, 278 F.3d 339 (4th Cir.), cert. denied, 123 S.Ct. 93 (2002), the Fourth Circuit Court of Appeals held that Virginia's statute was constitutional under the Equal Protection, Due Process, and Commerce Clauses. In one case, a court in New York has issued a preliminary injunction against New York's allocable share amendment. The State did not have an opportunity to present evidence on why the statute was necessary. The court erroneously believed that the State was acting simply to protect the major manufacturers. When that case is actually tried and the real facts are presented to the court, the State fully expects the statute to be upheld.

Passing the amendment will NOT jeopardize a State's MSA payments.

The only parties that could make such a challenge are parties to the MSA. The parties that make the preponderance of the payments have signed letters of assurance that the amendment will not affect the salutary effect of the Model Escrow Statutes. Companies that want to maintain an unfair competitive advantage may try to scare States with misinformation so that they can continue to profit by exploiting the loophole in the current statute. States that enact the amendment will ensure that NPMs who sell in their States make escrow deposits as originally intended.

The amendment will have a positive fiscal impact on every State.

The amendment costs nothing to implement and will lessen the administrative burden on State Attorneys General and Revenue offices. In addition, once a critical mass of states enacts the legislation, the decline in MSA revenue due to the loophole in the

Escrow Statutes will stop and States should recapture some of the MSA revenue that has been lost.

Testimony of John M. Olson
Lobbyist # 376

Altria Corporate Services, Inc.

House Bill No. 1305

Senate Appropriations Committee

Chairman Holmberg, and members of the Senate Appropriations Committee, my name is John Olson and I represent Altria Corporate Services, Inc., and its operating company, Philip Morris USA. We support House Bill 1305 which is commonly referred to as "the allocable share amendment". As you are aware, the major tobacco companies entered into a settlement agreement that provides for annual payments to each of the states that participated. North Dakota is a participating state and is expected to receive the sum of $42 million over the course of the 2005-2007 biennium. Obviously, the settlement payments are substantial and critically important to the State of North Dakota.

House Bill 1305 relates to legislation that was previously enacted by the State of North Dakota to provide protection and recourse against those tobacco companies that refused to enter into the master settlement agreement. The law was designed to require non-participating manufacturers to bear financial responsibility in the event the State of North Dakota would obtain a judgment against a non-participating manufacturer based upon public health claims.

I have attached a position statement issued by the National Association of Attorneys General that relates to the problem intended to be corrected by House Bill 1305. As noted, there is a loophole in the current law that provides that a non-participating manufacturer can undermine the effectiveness of the escrow provisions. House Bill 1305 will prevent a non-participating manufacturer from obtaining an early

release of its escrow funds, which certainly was an unintended consequence when the allocable share statute was first enacted. House Bill 1305 will only allow a non-participating manufacturer a release of those escrow funds that would have exceeded the amount it would otherwise have had to pay if it were a participant in the master settlement agreement. This is only fair, not only to the manufacturers that participated in the master settlement agreement but certainly to the State of North Dakota in protecting its interest on behalf of its citizens as well.

For these reasons, and for all of the points that have been made in the NAAG memo, I respectfully ask for your support of House Bill 1305.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
750 FIRST STREET NE · SUITE 1100
WASHINGTON, DC 20002
(202) 326-6057 (Tobacco Project) · (202) 408-8064 (Facsimile)
http://www.naag.org

IN SUPPORT OF THE ALLOCABLE SHARE AMENDMENT – AB 494/SB 245

PURPOSE OF THE LEGISLATION

AB 494/SB245 would close a loophole in the Model Escrow Statute that costs the States many millions of dollars in MSA payments every year. This loophole has enabled some Non-Participating Manufacturers ("NPMs") to avoid making significant escrow payments under the States' Model Escrow statutes. By avoiding such costs, NPMs are able to under-price Participating Manufacturers who are making MSA payments. These NPMs thereby take sales away from Participating Manufacturers and thus reduce the payments Participating Manufacturers make to the States. In 2003, sales by NPMs reduced MSA payments by $450 million. This legislation would significantly reduce that loss.

WHY IS THIS LEGISLATION IMPORTANT?

The Model Escrow Statute was enacted to ensure that Settling States would receive the benefits of the MSA and to prevent companies that refused to enter into the MSA from profiting unfairly as a result. A loophole in the current law has permitted some companies that refused to join the MSA to avoid any significant responsibility under the State's Escrow Statute. This amendment is designed to ensure that the Model Escrow Statutes operate evenhandedly as intended, thereby advancing the legitimate health and safety goals contemplated by the MSA.

WHAT ARE THE PURPOSES OF THE MODEL ESCROW STATUTE?

Companies that chose not to join the MSA were not released from claims by the States -- they do not make MSA payments and are not required to abide by the public health provisions of the MSA. States were concerned that NPMs could take advantage of the fact that they did not have to bear the cost of making MSA payments or abide by the public health provisions of the MSA. To deal with this concern, all Settling States enacted the Model Escrow Statute, which is designed to ensure that there will be a fund available to satisfy State claims in the event the State obtains a judgment against an NPM.

HOW HAVE THE PURPOSES OF THE MODEL ESCROW STATUTE BEEN SUBVERTED?

A provision of the Model Escrow Statute permits an NPM to obtain a release of funds from escrow "to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement ... had it been a Participating Manufacturer under the MSA...." Experience in several states has shown that this provision enables NPMs that concentrate their sales in a single state or a few states to obtain early releases of the great majority of their escrow deposits. This outcome was never contemplated and threatens to undermine the effectiveness of the Model Escrow Statutes. Escrow funds so minimized are not adequate to provide security to the States nor do they prevent unfair profit taking.

HOW DOES THE CURRENT ALLOCABLE SHARE RELEASE PROVISION SUBVERT THE MODEL STATUTE?

By way of example, consider an NPM that makes all its sales -- 100 million cigarettes -- in a state whose allocable share of MSA payments is two percent. Under the current statute, although the NPM sold 100 million cigarettes in the State, the amount it would have to leave in escrow would be based on only 2 million cigarettes. This permits an NPM that has geographically concentrated sales to obtain a refund of the vast majority of its

escrow deposits. This allows the NPM to significantly lower the cost of its cigarettes, because the NPM is not escrowing its full share of the future healthcare burden that its product imposes on the State. In lowering the cost, the NPM presents a product that is very attractive to youth, who tend to be more price-sensitive than adults. People that start smoking as minors are much more likely to become daily smokers, and eventually become a healthcare burden on the State.

HOW DOES THE PROPOSED AMENDMENT REMEDY THE PROBLEM?

AB 494/SB 245 eliminates the unintended consequence of the original language that has compromised the law's effectiveness. [BILL #] provides that the MSA payments relevant to release would not be limited to a State's allocable share of the NPM's (hypothetical) total MSA payments. In other words, where the NPM sells 100 million cigarettes in a State, the NPM would be entitled to a release only to the extent that its escrow payment exceeded what would have been its MSA payment on these 100 million cigarettes.

WEREN'T STATES TOLD THEY WERE NOT SUPPOSED TO AMEND THE MODEL STATUTE?

NO. The amendment is consistent with the purposes of the Model Escrow Statute: it sharply reduces the ability of an NPM to minimize its payments by concentrating its sales in one or two states and it sharply reduces the unintended disparity created by the current Model Escrow Statute. Moreover, the Original Participating Manufacturers ("OPMs") and the largest Subsequent Participating Manufacturers ("SPMs") have signed letters of assurance that the amendment will not affect the ability of the Model Escrow Statutes to protect the States from any potential downward adjustments in MSA payments.

IS THE AMENDMENT CONSTITUTIONAL?

There is no significant risk that the proposed amendment is unconstitutional. The Model Escrow Statute, has been challenged in several lawsuits, and has consistently been upheld as a valid enactment. For example, in Star Scientific Inc. v. Beales, 278 F.3d 339 (4th Cir.), cert. denied, 123 S.Ct. 93 (2002), the Fourth Circuit Court of Appeals held that Virginia's statute was constitutional under the Equal Protection, Due Process, and Commerce Clauses. Moreover, in the unlikely event the amendment was struck down, a "back-up provision" eliminates the allocable share release paragraph. Should the Model Escrow Statute thereafter be held unconstitutional due to the ABSENCE of the allocable share release paragraph, then the original Model Escrow Statute allocable share release language would be restored. As a result, in the remote event that BOTH alternative changes (i.e., eliminating the loophole, and eliminating the release paragraph altogether) are held unconstitutional, the Statute would be restored to its original position. (I.e.: If you amend your assault statute, and the amendment is held unconstitutional, assault doesn't become legal. Rather the law is restored to its original position.)

WILL PASSAGE OF THE AMENDMENT PUT AT RISK MY STATE'S MSA PAYMENTS?

NO. Passing the amendment will NOT jeopardize a State's MSA payments. The only parties that could make such a challenge are parties to the MSA. As noted, the parties that make more than 99 percent of the payments have signed letters of assurance that the amendment will not affect the validity of the Model Escrow Statutes. Companies that want to maintain an unfair competitive advantage may try to scare States with misinformation so that they can continue to profit by exploiting the loophole in the current statute. States that enact the amendment will ensure that NPMs who sell in their States make escrow deposits as originally intended.

WILL THE PROPOSAL HAVE A FISCAL IMPACT?

The proposed amendment would likely be "revenue neutral." Escrow deposits do not constitute state revenues; they remain the property of the NPM. However, the legislation would likely result in a reduction in the administrative costs of enforcing the Model Escrow Statute because there would be fewer requests for releases from escrow for the State to process. Moreover, should the State obtain a judgment against an NPM to recover the health care costs imposed on the State by the NPM's products, the proposed legislation would enhance the State's ability to recover that judgment.

ANALYSIS OF THE TOBACCO SETTLEMENT TRUST FUND FOR THE 2003-05 AND 2005-07 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2003-05 Biennium		2005-07 Biennium	
Beginning balance		$0		$0
Add revenues				
Tobacco settlement revenues collected to date	$23,238,627[1]			
Projected tobacco settlement revenues	22,972,067		$45,944,134	
Total revenues		46,210,694[2]		45,944,134[2]
Total available		$46,210,694[3]		$45,944,134
Less expenditures and transfers				
Transfers to the community health trust fund (10%)	$4,621,070		$4,594,414	
Transfers to the common schools trust fund (45%)	20,794,812		20,674,860	
Transfers to the water development trust fund (45%)	20,794,812		20,674,860	
Total expenditures and transfers		46,210,694		45,944,134
Estimated ending balance		$0		$0

[1]Four 2003-05 biennium tobacco settlement payments totaling $23,238,627 have been received by the state as of March 1, 2005. Total tobacco settlement collections of $129,775,774 have been received to date by North Dakota.

[2]Revenues - 1999 House Bill No. 1475 (North Dakota Century Code Section 54-27-25) provides that interest on the money in the tobacco settlement trust fund must be retained in the fund, and the principal and interest must be allocated 10 percent to the community health trust fund, 45 percent to the common schools trust fund, and 45 percent to the water development trust fund. The interest earned on the money in the tobacco settlement trust fund will increase the amount available for transfers to the other funds. However, because of uncertainty regarding the timing of the receipt of the tobacco settlement proceeds, interest earned on the balance of the tobacco settlement trust fund has not been included in this analysis. Tobacco settlement revenues collected to date have been transferred immediately to the proper trust funds; therefore, no interest has been earned by the tobacco settlement trust fund to date.

[3]The tobacco settlement proceeds for the 2003-05 biennium were estimated to be $51,271,214 at the end of the 1999 legislative session. The decrease in the amount of tobacco settlement revenues collected for the biennium of $5,060,520 is the result of volume adjustments made to payments received. A volume adjustment is an adjustment made to a settlement payment to reflect increases or decreases in tobacco manufacturers' operating income from cigarette sales. The original estimate was calculated before the anticipated effect of volume adjustments on tobacco settlement collections was determined. The total original estimated tobacco settlement collections made during the 1999 legislative session and the total estimated collections as revised by the Office of Management and Budget to reflect anticipated volume adjustments are:

	1999 Original Estimated Collections	Office of Management and Budget Revised Estimated Collections
1999-2001	$57,593,770	$52,900,784
2001-03	61,143,578	53,636,363
2003-05	51,271,214	46,210,694
2005-07	51,271,214	45,944,134
2007-17 ($82,231,080/$73,687,266 per biennium)	411,155,400	368,436,330
2017-25 ($58,591,490/$52,503,832 per biennium)	234,365,960	210,015,328
Total	$866,801,136	$777,143,633

FUND HISTORY

North Dakota Century Code Section 54-27-25 created by 1999 House Bill No. 1475 established a tobacco settlement trust fund for the deposit of all tobacco settlement money obtained by the state. Money in the fund, including interest, must be transferred as follows, within 30 days of its deposit in the fund:

- Ten percent to the community health trust fund.
- Forty-five percent to the common schools trust fund.
- Forty-five percent to the water development trust fund.

Prepared by the North Dakota Legislative Council staff

July 2002

TOBACCO SETTLEMENT COLLECTIONS

STATE-BY-STATE DISTRIBUTION

In November 1998 the Attorneys General of 46 states, the District of Columbia, and five United States territories signed an agreement with the larger tobacco companies requiring the companies to make annual payments to states in perpetuity as reimbursement for past tobacco-related costs. This agreement is referred to as the Master Settlement Agreement and commits tobacco companies to pay approximately $206 billion over the first 25 years of the agreement. As of April 2001, a total of $13.5 million of tobacco settlement payments has been distributed to states as a result of the Master Settlement Agreement. The four states that are not party to the Master Settlement Agreement--Florida, Minnesota, Mississippi, and Texas--had reached earlier, individual settlements with the tobacco companies.

Attached as Appendix A is a chart detailing estimated and actual tobacco settlement payments received by states as of April 2001. States received their first Master Settlement Agreement payment at different dates based on the date the agreement became final in their state. Missouri did not achieve state-specific finality until after April 2001; thus, its payments are not reflected in the appendix.

North Dakota has received total tobacco settlement collections of $79,681,496 as of June 2002. Actual tobacco collections for the 1999-2001 biennium were $52.9 million, $4.7 million less than the original estimated amounts. The decrease is the result of volume adjustments, which are annual adjustments based on the participating manufacturers' cigarette sales and market share. Adjustments are also made for inflation. North Dakota's total projected tobacco settlement collections are $776.6 million through the year 2025.

MASTER SETTLEMENT AGREEMENT STATE ALLOCATION PERCENTAGES

The formula that provided the basis for determining the allocation percentages for the Master Settlement Agreement payments was composed of two variables each weighted equally--smoking-related Medicaid expenditures and smoking-related non-Medicaid health care costs of each state. The smoking-related health care cost variable included factors for each state's population and smoking prevalence. Additional negotiations resulted in some adjustments for state-specific concerns, such as additional funding for smaller states for smoking cessation programs, due to not having the same economy of scale as larger states. North Dakota receives 0.3660138 percent of the total. A copy of the Master Settlement Agreement state allocation percentages is included as Appendix B.

The four types of Master Settlement Agreement payments are:

- Annual payments - Payments distributed to states based on the Master Settlement Agreement allocation percentages, with adjustments. The base payment amount increases each year from 2000-18; and remains constant after 2018. Total annual payments range from $4 billion to $8 billion per year (paid by April 15 of each year).
- Initial payments - Consists of five annual payments from 1998 through 2003. A set base amount per year is distributed to states, based on the Master Settlement Agreement allocation percentages, with adjustments. Total annual payments range from $2.4 billion to $2.7 billion per year (paid by January 10 of each year).
- Strategic contribution fund - Annual payments beginning in 2008 through 2017. A set base amount of $861 million per year, distributed to states based on a separate formula, with adjustments. The formula is based on the level of a state's contribution to litigation or resolution of state tobacco lawsuits (paid by April 15 each year).
- National Tobacco Growers Settlement Trust (Phase II) - Paid annually over 12 years from 1999-2010 and is based on a separate agreement between tobacco-growing states and tobacco companies. The estimated annual payment to the National Tobacco Growers Settlement Trust is $5.15 million. The tobacco-growing state's share is based on its 1998 share of production of cigarette tobacco.

ACCESS TO THE COMMUNITY HEALTH TRUST FUND

North Dakota Century Code Section 54-27-25 provides that the money in the tobacco settlement trust fund must be allocated 10 percent to the community health trust fund, 45 percent to the common schools trust fund, and 45 percent to the water development trust fund. The 2001 Legislative Assembly appropriated $4.7 million from the community health trust fund for tobacco prevention and control. Senate Bill No. 2380 (2001) provides for the establishment of the community health grant program and the Community Health Grant Program Advisory Committee. The $4.7 million appropriated to the community health grant program is to be allocated as follows:

- Forty percent for school grants for programs to reduce student tobacco use. A total of

$1,880,000 has been allocated to public health units for the 2001-03 biennium based on school enrollment in kindergarten through grade 12 (public, private, and home-schooled) in each county. Each public health unit must have an agreement with school boards concerning prevention programs to be funded. The program must include student participation and a plan to reduce student tobacco use.

- Forty percent for community grants for programs to reduce tobacco use by residents living in the counties served by the public health units. A total of $1,880,000 has been allocated to public health units for the 2001-03 biennium based as follows:

  For counties with less than 10,000 residents, $5,000 per county plus a per capita distribution.

  For counties with 10,000 or more residents, a per capita distribution.

Each public health unit must have a unitwide plan developed in cooperation with local elected officials in the unit's jurisdiction. The plan must address programs to reduce tobacco use by the residents living in the counties serviced by the public health units. The programs may also address other chronic diseases.

The plans for the school and county grants were to be submitted to the Community Health Grant Program Advisory Committee by April 30, 2002. Any plans received after this date will be reviewed on a case-by-case basis. An additional grant approval deadline of August 30, 2002, and corresponding grant approval deadline of October 30, 2002, have been established for funds not allocated in the original grant process.

The advisory committee has been meeting monthly since March 2002 to review and approve grant plans. The programs must build upon and not duplicate existing programs, follow the Centers for Disease Control and Prevention "best practices" for comprehensive tobacco control programs, and address SMART (specific, measurable, attainable, realistic, and time-bound) objectives. Program administrators are to submit to the advisory committee progress reports on meeting objectives and funds expended. A copy of the community health grant program plan checklist and review is included as Appendix C.

- Twenty percent for grants to public health units to supplement existing state aid from other sources. A total of $940,000 has been allocated to public health units by providing $9,400 to each county plus a per capita distribution. Payments are made by the Community Health Grant Program Advisory Committee to the public health units on a quarterly basis.
- In addition, 2001 Senate Bill No. 2380 provides $350,000 from the community health trust fund--$100,000 for funding the Community Health Grant Program Advisory Committee and $250,000 for funding grants to cities and counties on a dollar-for-dollar matching fund basis for city and county employee tobacco education and cessation programs.

SUMMARY

- The Master Settlement Agreement directs the largest tobacco companies to pay approximately $206 billion to states over a 25-year period.
- North Dakota has received $79.7 million in tobacco settlement collections as of June 2002.
- Each state's allocation percentage is based on smoking-related Medicaid expenditures and smoking-related non-Medicaid health care costs.
- Senate Bill No. 2380 (2001) provides for community health trust fund money to be allocated for student tobacco reduction programs (40 percent), county tobacco reduction programs (40 percent), and to supplement existing state aid to public health units (20 percent).

ATTACH:3

Table 3: Original Estimated and Actual MSA Payments Received by States as of April 2001

Dollars in thousands

State	Original estimated payments through 2001	Actual payments received through 2001	Percent difference estimated vs. actual payments
Alabama	$254,304	$228,618	-10.1
Alaska	53,724	49,120	-8.6
Arizona	231,922	207,996	-10.3
Arkansas	130,300	121,546	-6.7
California[a]	2,008,461	1,790,356	-10.9
Colorado	215,711	197,225	-8.6
Connecticut	292,134	260,406	-10.9
Delaware	62,229	55,470	-10.9
Georgia	386,219	353,121	-8.6
Hawaii	94,706	84,420	-10.9
Idaho	57,161	52,262	-8.6
Illinois	732,365	669,603	-8.6
Indiana	320,971	293,465	-8.6
Iowa	136,846	125,118	-8.6
Kansas	131,182	119,940	-8.6
Kentucky	277,126	247,028	-10.9
Louisiana	354,889	324,476	-8.6
Maine	121,060	110,686	-8.6
Maryland	355,692	325,210	-8.6
Massachusetts	635,549	566,526	-10.9
Michigan	684,797	610,424	-10.9
Missouri[b]	357,918	0	-
Montana	66,837	61,110	-8.6
Nebraska	93,624	85,600	-8.6
Nevada	95,976	87,751	-8.6
New Hampshire	104,787	95,807	-8.6
New Jersey	608,488	557,730	-8.3
New Mexico	93,844	85,802	-8.6
New York[c]	2,008,159	1,790,083	-10.9
North Carolina	366,994	327,137	-10.9
North Dakota	57,594	52,658	-8.6
Ohio	792,673	724,742	-8.6
Oklahoma	163,041	149,068	-8.6

Dollars in thousands

State	Original estimated payments through 2001	Actual payments received through 2001	Percent difference estimated vs. actual payments
Oregon	180,589	160,976	-10.9
Pennsylvania	904,292	664,190	-26.6
Rhode Island	113,123	103,428	-8.6
South Carolina	185,104	169,241	-8.6
South Dakota	54,909	50,203	-8.6
Tennessee	384,084	354,356	-7.7
Utah	70,004	64,006	-8.6
Vermont	64,701	57,675	-10.9
Virginia	321,749	294,180	-8.6
Washington	323,089	295,401	-8.6
West Virginia	139,489	127,534	-8.6
Wisconsin	326,044	290,634	-10.9
Wyoming	39,079	34,834	-10.9
Total[b]	**$15,095,621**	**$13,477,162**	**-10.7**

[a]California payment amounts include payments to four cities and the 58 counties in the state which amount to 50 percent of the total payments.

[b]Total excludes original estimated payments to Missouri.

[c]New York payment amounts include payments to the 57 counties in the state and New York City which amount to 49 percent of the total payments.

Source: GAO analysis of data from the National Association of Attorneys General.

Adjustments Affect State Payments

As noted above, payments are adjusted for a number of factors such as fluctuations in the volume of cigarette sales, inflation, and changes in participating manufacturers' market share. The combined effect of all adjustments has been to lower payments by about $1.6 billion—or nearly 11 percent below the original estimate. The 45 states that had reached state-specific finality and received payments were originally estimated to receive $15.1 billion through April 2001 but actually received nearly $13.5 billion during this period—an overall reduction of about $1.6 billion.[18] The adjustments varied by state, from a high of 26.6 percent in Pennsylvania to a low of 6.7 percent in Arkansas.

[18]Missouri reached state-specific finality in late April 2001 and did not receive any MSA payments through April 2001.

the allocation percentages were determined by negotiations the payments are not strictly proportional to population. Table 1 shows the final state allocation percentages as explicitly agreed to in the MSA.

Table 1: MSA State Allocation Percentages

State	Percentage
Alabama	1.6161308
Alaska	0.3414187
Arizona	1.4738845
Arkansas	0.8280661
California	12.7639554
Colorado	1.3708614
Connecticut	1.8565373
Delaware	0.3954695
Georgia	2.4544575
Hawaii	0.6018650
Idaho	0.3632632
Illinois	4.6542472
Indiana	2.0398033
Iowa	0.8696670
Kansas	0.8336712
Kentucky	1.7611586
Louisiana	2.2553531
Maine	0.7693505
Maryland	2.2604570
Massachusetts	4.0389790
Michigan	4.3519476
Missouri	2.2746011
Montana	0.4247591
Nebraska	0.5949833
Nevada	0.6099351
New Hampshire	0.6659340
New Jersey	3.8669963
New Mexico	0.5963897
New York	12.7620310
North Carolina	2.3322850

State	Percentage
North Dakota	0.3660138
Ohio	5.0375098
Oklahoma	1.0361370
Oregon	1.1476582
Pennsylvania	5.7468588
Rhode Island	0.7189054
South Carolina	1.1763519
South Dakota	0.3489458
Tennessee	2.4408945
Utah	0.4448869
Vermont	0.4111851
Virginia	2.0447451
Washington	2.0532582
West Virginia	0.8864604
Wisconsin	2.0720390
Wyoming	0.2483449

Source: Master Settlement Agreement, Exhibit A.

Prior to the MSA, some counties in California and New York had independently filed lawsuits against the tobacco industry. In these states, the counties bear financial responsibility for a share of Medicaid costs, and the lawsuits sought compensation for the counties' cost of treating smoking related illnesses. In both these states, under different arrangements, counties receive a share of MSA payments.

The state of California had entered into a memorandum of understanding (MOU) with its counties and four major cities in August 1998—prior to the MSA—to coordinate their lawsuits with the state's suit and provide for the allocation of any settlement. The terms of the MOU included an even 50/50 split of the financial recovery between the state and local governments, with the local share further split between the counties and four major cities. In California's case, all MSA payments are made to the state and the state distributes payments to the 58 counties and four cities. (See appendix II for the counties' and cities' share of payments in California.)

In the case of New York, the state's consent decree provides for allocation of a portion of its MSA payments to the counties and New York City based on the county share of Medicaid costs and population as well as some specific considerations for individual counties. In New York's case, each of

Community Health Grant Program Plan Checklist

To assist you in preparing a plan that meets the requirements, this checklist can serve as your guide. Please include this checklist with your plan when you submit it.

Plan must:

School component

_____ Include agreements with school boards concerning prevention programs to be funded.
_____ Include student participation in plan development.
_____ Include a plan to reduce student tobacco use.

Community component

_____ Be developed in cooperation with local elected officials.
_____ Include a plan to reduce tobacco use by residents in the counties served by the health unit.

All components

_____ Build upon, but not duplicate existing programs.
_____ Based on CDC Best Practices to the extent possible.
_____ Include SMART objectives.
_____ Include monitoring and evaluation plan.
_____ Include budget and budget justification.

Plan should, to the extent possible:

- Include community programs that:

_____ Engage youth in the development and implementation of interventions;
_____ Develop partnerships with local organizations;
_____ Conduct educational programs at local levels;
_____ Promote government and voluntary health policies, such as clean indoor air, youth access, and treatment coverage;
_____ Restrict minors' access to tobacco; and
_____ Deter smoking in public places.

- Include the promotion of school programs by partnering with public health organizations, school boards, education associations, and other organizations in each county to provide school programs that promote:

_____ Tobacco free policies;
_____ Evidence-based curricula;
_____ Teacher training;
_____ Parental involvement; and
_____ Cessation services for students and staff.

- Address disparities related to tobacco use

_____ Include population groups with high tobacco usage in plan development; and
_____ Describe how disparities in tobacco use will be addressed.

Community Health Grant Program Plan
Suggested Outline

A. Applicant (check one)
____ Public Health Unit ____ Cooperating Public Health Units

B. Name of Grantee(s)
Contact person
Street address
City State Zip code
Telephone Fax
Email

C. Describe your service area and list the counties included in the plan.

D. Describe the tobacco use problem in your service area including populations that have disparate or high use of tobacco.

E. Describe your community planning and priority setting process. (Include types of individuals and groups that participated in the planning process.)

F. Outline your goals, SMART objectives and strategies to accomplish the objectives.

G. Describe your monitoring and evaluation plan. (Include both process and outcome evaluation.)

H. Include a detailed budget and budget justification.

Community Health Grant Program Plan Technical Review

Plan must:

School component

_____ Include agreements with school boards concerning prevention programs to be funded.

_____ Include student participation in plan development.

_____ Include a plan to reduce student tobacco use.

Community component

_____ Be developed in cooperation with local elected officials.

_____ Include a plan to reduce tobacco use by residents in the counties served by the health unit.

All components

_____ Build upon, but not duplicate existing programs.

_____ Based on CDC Best Practices to the extent possible.

_____ Include SMART objectives.

_____ Include monitoring and evaluation plan.

_____ Include budget and budget justification.

Plan should, to the extent possible:

- Include community programs that:

_____ Engage youth in the development and implementation of interventions;

_____ Develop partnerships with local organizations;

_____ Conduct educational programs at local levels;

_____ Promote government and voluntary health policies, such as clean indoor air, youth access, and treatment coverage;

_____ Restrict minors' access to tobacco; and

_____ Deter smoking in public places.

- Include the promotion of school programs by partnering with public health organizations, school boards, education associations, and other organizations in each county to provide school programs that promote:

_____ Tobacco free policies;

_____ Evidence-based curricula;

_____ Teacher training;

_____ Parental involvement; and

_____ Cessation services for students and staff.

- Address disparities related to tobacco use

_____ Include population groups with high tobacco usage in plan development; and

_____ Describe how disparities in tobacco use will be addressed.

Community Health Grant Review

Grantee

Date of Review

Reviewer

Criteria	Scoring
The plan is based on identified needs through community assessment. (0 – 10 points)	_____
The degree to which the plan involved community members, school personnel, students and elected officials. (0 – 10 points)	_____
The goals and SMART objectives relate to identified needs. (0 – 10 points)	_____
Extent to which the plan is based on CDC "Best Practices" and other evidenced-based practices. (0 – 10 points)	_____
Extent to which the budget and budget justification are realistic and relate to identified needs. (0 – 10 points)	_____
Extent to which monitoring and evaluation relate to the SMART objectives. (0 – 10 points)	_____
TOTAL	

Prepared by the North Dakota Legislative Council staff

December 2004

FISCAL INFORMATION SUMMARY

This memorandum provides fiscal information reflecting the December 2004 executive budget revenue forecast regarding major tax types and key cost areas.

1. **Sales and use tax revenue.** The estimated impact on state general fund revenues of a one percentage point change in the state's 5 percent sales and use tax, including the motor vehicle excise tax, is approximately **$186 million per biennium**, or $93 million per year for the 2005-07 biennium based on the December 2004 executive budget revenue forecast. The following schedule shows general fund revenue collections from sales and use taxes, including motor vehicle excise taxes, for the 1997-99 through 2005-07 bienniums:

Biennium	Actual or Estimated Revenue (In Millions)	Percentage Change From Previous Biennium
1997-99	$664.4	
1999-2001	$722.2	8.7%
2001-03	$760.2	5.3%
2003-05 (revised forecast)	$849.9	11.8%
2005-07 (executive forecast)	$896.4	5.5%

2. **Individual income tax revenue.** House Bill No. 1399 (2001) decoupled the state income tax from the federal income tax to a rate based on federal taxable income. The equivalent tax rates range from approximately 2.1 to 5.54 percent of taxable income. The estimated impact on state general fund revenues of a 10 percent change in the state income tax rates (for example, the 3.92 percent rate would increase to 4.31 percent) is approximately **$44 million per biennium** or $22 million per year for the 2005-07 biennium based on the December 2004 executive budget revenue forecast. The following schedule shows general fund revenue collections from individual income taxes for the 1997-99 through 2005-07 bienniums:

Biennium	Actual or Estimated Revenue (In Millions)	Percentage Change From Previous Biennium
1997-99	$358.3	
1999-2001	$409.3	14.2%
2001-03	$396.2	(3.2%)
2003-05 (revised forecast)	$436.0	10.1%
2005-07 (executive forecast)	$467.0	7.1%

3. **Gas tax revenues.** A one-cent gas tax increase over the current 21 cents per gallon raises an estimated $3.5 million per year or **$7 million for a biennium**. A one-cent special fuels (diesel) tax increase over the current 21 cents per gallon raises an estimated $1.55 million or $3.1 million per biennium. Of the $10.1 million total, $6.4 million, or 63 percent, would be deposited in the state highway fund and $3.7 million, or 37 percent, would be distributed to counties and cities.

4. **Oil tax revenue.** The estimated impact on state revenues of a $1 increase or decrease in the price of a barrel of oil is approximately **$3.5 million per biennium** based on the December 2004 executive budget revenue forecast for oil and gas production and oil extraction tax collections. The 2005-07 estimated impact on state revenues of a $1 change in the price of oil is $1.1 million more than the $2.4 million estimate for the 2003-05 biennium due, in part, to the oil extraction tax increasing from 4 to 6.5 percent as a result of higher oil prices which has triggered the higher tax rate. The following schedule presents general fund revenue collections from oil and gas taxes for the 1997-99 through 2005-07 bienniums:

Biennium	Actual or Estimated Revenue (In Millions)	Percentage Change From Previous Biennium
1997-99	$43.7	
1999-2001	$62.0*	41.9%
2001-03	$62.0*	0.0%
2003-05 (executive budget estimate)	$71.0*	14.5%
2005-07 (executive budget estimate)	$84.3*	18.7%

*Transfers to the permanent oil tax trust fund were $13.2 million for the 1999-2001 biennium and $7.6 million for the 2001-03 biennium. It is estimated that $40.8 million will be transferred to the permanent oil tax trust fund for the 2003-05 biennium. The 2005-07 executive budget recommends amending North Dakota Century Code Section 57-51.1-07.2 to increase from $71 million to $84.5 million the maximum general fund portion of oil extraction tax and oil and gas gross production tax. The executive budget estimates that oil tax collections during the 2005-07 biennium will total $84.3 million. Therefore, the executive budget does not anticipate any transfers to the permanent oil tax trust fund during the 2005-07 biennium.

5. **Oil prices.** The following schedule compares estimates during the 2003 Legislative Assembly to actual oil prices during the 2003-05 biennium:

Quarter/ Month	Estimated Average Price Per Barrel During 2003 Legislative Assembly	Actual Average Price Per Barrel[1]	Amount Over (Under) Original Estimate
July-September 2003	$26.24	$25.18	($1.06)
October-December 2003	$23.95	$25.78	$1.83
January-March 2004	$23.23	$29.45	$6.22
April-June 2004	$23.06	$32.86	$9.80
July-September 2004	$22.86	$37.99	$15.13
October-November 2004	$22.29	$44.92	$22.63

[1]The actual market price per barrel of oil is the Tesoro-posted field price for North Dakota sweet crude, including the Montana counties of Sheridan, Roosevelt, and Richland.

6. **Tobacco settlement payments.** North Dakota has received $129.8 million as of December 2004 as a result of the tobacco settlement, which has been deposited in the tobacco settlement trust fund. The tobacco settlement trust fund collections, through June 30, 2005, are allocated among the community health trust fund, common schools trust fund, and water development trust fund pursuant to North Dakota Century Code Section 54-27-25, as follows:

	Community Health Trust Fund (10%)	Common Schools Trust Fund (45%)	Water Development Trust Fund (45%)	Total Tobacco Settlement Collections
1999-2001 (actual)	$5,290,078	$23,805,353	$23,805,353	$52,900,784
2001-03 (actual)	5,363,637	24,136,363	24,136,363	53,636,363
2003-05 (as of December 2004)	2,323,863	10,457,382	10,457,382	23,238,627
2003-05 (estimated remaining payments)	2,297,207	10,337,430	10,337,430	22,972,067
Total estimated through June 30, 2005	$15,274,785	$68,736,528	$68,736,528	$152,747,841

Total collections for the next 10 years as estimated by the Office of Management and Budget are:

2005-07	$45,944,100
2007-09	$73,687,000
2009-11	$73,687,000
2011-13	$73,687,000
2013-15	$73,687,000

Collections are estimated to total $777,144,000 through the year 2025. This compares to a total of $866,800,000 originally projected during the 1999 Legislative Assembly.

7. **State school aid payments.** The estimated cost of a $10 increase in the state school aid per student payment is approximately $1 million per year. This is based on the current estimate of an average of 104,475 weighted students for each year of the 2005-07 biennium. Statutory per student payments for the 2003-05 biennium are $2,509 for the first year and $2,623 for the second year.

8. **Teacher payments.** The estimated cost to provide additional teacher compensation payments of $1,000 per third-year returning teacher in the first year of the 2005-07 biennium and an additional $1,000 per fourth-year returning teacher in the second year of the biennium is approximately $25.9 million. This is based on the current estimate of 8,650 full-time equivalent instructional personnel for the 2004-05 school year. The 2001 Legislative Assembly provided teacher compensation payments of $1,000 for the first year of the 2001-03 biennium and $2,000 for the second year (second-year total of $3,000).

9. **State employee salary increase, excluding higher education.** The estimated cost of a 1 percent state employee salary increase **per year**, including fringe benefits, is $3.4 million, of which $1.7 million is from the general fund. This estimate excludes higher education employees.

10. **Inflationary increases.** The historic and projected consumer price indexes as recorded or projected by Economy.com based on the consumer price index for all urban consumers are:

1991	4.2%	2000	3.4%
1992	3.0%	2001	2.8%
1993	3.0%	2002	1.6%
1994	2.6%	2003	2.3%
1995	2.8%	2004	2.7%
1996	2.9%	2005	2.2%
1997	2.3%	2006	2.2%
1998	1.5%	2007	2.4%
1999	2.2%	2008	2.1%