

2009 SENATE JUDICIARY

SCR 4038

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 4038

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 4/28/09

Recorder Job Number: 12333

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to the creation of a public health investment trust fund

Senator John Andrist – District 2 – Introduces the bill – See written testimony. He states it is not proper to characterize measure 3 as a mistake even though most in this body thinks it had some flaws. He also states this resolution gives the voters a chance to take a second look.

He urges a do pass. He proposes an amendment, 0201, which address money that is already in the fund.

Senator Fiebiger – Said he is concerned because this is the 74th Legislative day and the process, whether this would get a full and appropriate hearing in light of the timing.

Senator Andrist – Said he is not changing public policy with this bill, only asking the voters what they think.

Senator Fiebiger – His concern is that the people have already taken a look and said what they want done.

Senator Andrist – Replies, that he thinks many people feel they didn't understand it back then. He doesn't think voters understood how much money was going to be in the fund and the ramifications there would be. He would not presume overrule voters, this is just an opportunity to take a second look. Maybe this money could be spent for a better purpose.

Senator Nething – States, the Legislature has no funds available to promote its own constitutional amendment proposals. He asks who would take the lead on advocating this proposal

Senator Andrist – He said he wants this to be as transparent as possible and voters can easily understand it and see all of its implications. In the process he has spoken with public health people also. Based on that he thinks that sector would be very supportive. Instead of spending all this money for a single purpose it gives them a chance to decide on local priorities.

Senator Nething – Said he admires the people in public health but says they are government agencies as well and have no funds to spend on this.

Senator Andrist – Responds he doesn't know anyone with deep pockets to support this and on the other hand there are that many people with deep pockets that would oppose it. It would be sent to the voters with less influence either way.

Senator Olafson - Asks if there would be a public health district in each county.

Senator Andrist – Replies, it says public health districts, they are already organized, some are multi county units, some are single county units. The Legislature has to appropriate the money, like they do all money, and they would adopt the formula from which it is distributed.

Senator Olafson – Asks if the decision would be made in the local health districts rather than in the central bureaucracy.

Senator Andrist – Replies, correct.

Senator Nething – Asks him if it should read district health units. Should it be districts instead of units?

Senator Andrist – Said his intent is it go to public health districts.

Senator Nelson – She thinks that there was a problem with the first go-round because of the “other needs”, from what she has heard from several folks they don’t like the “other needs” part. The purpose is this is for tobacco cessation and that’s what it should be used for.

Senator Andrist – Responds that the word public health appears often in the bill; clearly the intent is it would have to be public health needs as a priority.

Senator Nething – Said in the bill it doesn’t say other needs. Your testimony says other needs.

Senator Fiebiger – Said he worries if we start listing what is going to be included when the whole idea behind it was tobacco cessation and prevention. He worries it will get so diluted from the original intent which is tobacco.

Senator Andrist – Says his vision is if they would use this money for extra public health needs.

Senator Olafson – Suggests ending the sentencing at public health programs.

Senator Andrist – Said he welcomes ideas or changes as long as it doesn’t change the intent. He said if this should pass it will get rid of all the contention caused by Measure 3. If the voters decide they like Measure 3, then we would have a clear directive.

Senator Schneider – Asks who determines what a public health program is.

Senator Andrist – His vision would that they would sit down and decide what the most pressing health need is. It doesn’t restrict what need it might be.

Senator Nething – States, we have not seen too many constitutional amendments in this committee and having served in a constitutional convention, a great deal of time was spent making sure they didn’t legislate and get into too much detail. Maybe that is the frame of mind

we should adopt, we shouldn’t get to specific in legislating unless it is your intent that we be

very specific. It is clear here your intent is that it go to public health units, and then let them determine what that expenditure should be for.

Senator Andrist – Wondered himself if it belonged in the constitution, as the drafting evolved he said he got quite comfortable with it being in the constitution because it simply sets a trust fund and the Legislature then can legislate a parameter for it. This simply puts in the trust fund and provides a method of distribution of the earnings. It doesn't strongly direct public policy.

Senator Nething asks for opposition or neutral. Neither come forward.

Senator Nething closes the hearing on 4038.

Senator Lyson moves amendment 0201.

Senator Olafson seconded

Discussion

Verbal vote – all yes. Motion carried

Senator Nelson moves delete on line 20, put the period after other public health programs.

Senator Schneider seconded

Discussion

Senator Nelson – moves to include that units be changed to districts in line 19.

Delete changing units to districts, Legislative Council said unit is the correct term.

Verbal vote – all yes. Amendment carries

Senator Nething recesses for 10 minutes till we find out about the fiscal note.

Reconvenes the committee

Senator Lyson moves a do pass as amended

Senator Olafson seconded

Discussion

Senator Fiebiger – Said the public has already had a shot at this and they said what they want done. He is not sure when there is not enough time to have a thorough hearing where we could hear from opposition. He said he will oppose it.

Senator Schneider – Believes the voters have spoken and are going to wonder what part of yes doesn't the Legislature understand. He said there is a very clear view from the public what they want on this issue.

Senator Nelson – Her own feeling on delayed bills is that they are for things that did not exist prior to the deadline for submitting the bill. This situation existed then, certain things in this are great ideas but this is not the time or place to do it.

Roll call vote – 3 yes, 3 no, motion fails

Senator Nelson – moves a do not pass as amended

Senator Fiebiger - seconded

Roll call vote – 3 yes, 3 no, motion fails

Senator Olafson moves without committee recommendation

Senator Schneider seconded

Roll call vote – 5 yes, 1 no, motion passes

Senator Olafson will carry

FISCAL NOTE
Requested by Legislative Council
04/28/2009

Bill/Resolution No.: SCR4038

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						
Expenditures						
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).*

Tobacco settlement funds will be deposited in a different special fund. Only the earnings can be appropriated before 2020.

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.*

Revenue available to the state will be reduced by the earnings amount now to be distributed to Public Health Units rather than the Tobacco Advisory Committee.

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.*

Revenue will be deposited in a different special fund with only the earnings available for appropriation until 2020.

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.*

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:	Lori Laschkewitsch	Agency:	OMB
Phone Number:	8-2680	Date Prepared:	04/28/2009

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4038

Page 1, line 15, after "state" insert "after June 30, 2011,"

Page 1, line 17, after the underscored period insert "On July 1, 2011, the state treasurer shall transfer to the public health investment trust fund all tobacco settlement dollars obtained by the state before July 1, 2011, which are unexpended and unobligated on July 1, 2011."

Page 1, line 19, replace "units" with "districts"

Page 1, line 20, remove ", including immunization programs, cancer"

Page 1, line 21, remove "screening and prevention, diabetes screening and control, and aging services"

Renumber accordingly

Date:
Roll Call Vote #: 14

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES 1038
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen. Nelson Seconded By Sen. Fiebig

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman		X	Sen. Tom Fiebig	X	
Sen. Curtis Olafson - V. Chair.		X	Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson		X	Sen. Mac Schneider	X	

Total (Yes) 3 (N) 3

Absent _____

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

SCR 4038: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SCR 4038 was placed on the Sixth order on the calendar.

Page 1, line 15, after "state" insert "after June 30, 2011,"

Page 1, line 17, after the underscored period insert "On July 1, 2011, the state treasurer shall transfer to the public health investment trust fund all tobacco settlement dollars obtained by the state before July 1, 2011, which are unexpended and unobligated on July 1, 2011."

Page 1, line 20, remove ", including immunization programs, cancer"

Page 1, line 21, remove "screening and prevention, diabetes screening and control, and aging services"

Re-number accordingly

2009 HOUSE CONSTITUTIONAL REVISION

SCR 4038

Bill No. SCR 4038

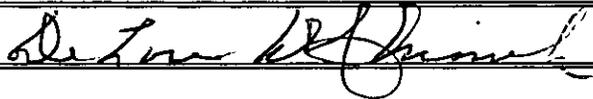
House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: April 30, 2009

Recorder Job Number: 12414

Committee Clerk Signature



Minutes:

Rep. Koppelman opened the hearing on SCR 4038.

Roll call was taken with all members present.

Rep. Koppelman: We are here to discuss engrossed SCR 4038, which is a late constitutional revision proposal that was passed in the Senate.

Senator Andrist: (see testimony #1).

Rep. Meyer: SB 2063 included a statewide youth initiative; your bill doesn't.

Senator Andrist: 2063 is the one that enabled Measure 3? Mine wasn't on specifics. It was to give the money to the local health risks. Sometimes our priorities change. A year or so ago I was hearing from the public health community that they didn't have money for immunization? I am guessing this money could give them a nice little nest egg to turn to if they needed something. I know the supporters of Measure 3 were passionate and wanted it passed. I just think that those people did not realize what the numbers were and maybe they were thinking some of that money should be spread out. I don't know until we find out when we vote.

Rep. Conrad: You said Measure 3 was flawed and tell me exactly what the flaw was?

Senator Andrist: I am referring to the section to give the central committee the authority; if they didn't have enough money for their programs to invade the Water Development Trust

Fund that the County School Trust Fund without an appropriation. The constitution clearly says that the legislature has to appropriate all the funds.

Rep. Conrad: You picked out the flaws in Measure 3. As I understand they have to first fully fund the Center for Disease Control's plan and that will take twenty years to do that. So after seven years the legislature can make any modification we want by a majority vote and not require two thirds so I put out my concern so let's see how it goes because they certainly will have enough money to do what they are mandated to do for twenty years. That is the way I resolves my similar concern. How does your bill address the water fund?

Senator Andrist: My measure doesn't address Measure 3 only. I asked the legislative council how it would affect Measure 3. They couldn't answer totally. Their off handed view was major changes continue to exist, but it might not have funds of the money was put into another trust fund.

Rep. Schneider: You keep mentioning your resolution doesn't have anything to do with Measure 3, but if this passes and goes onto the ballot and people vote for it again; it seems to me we have two measures, one on the constitutional in conflict. How do you see that being resolved?

Senator Andrist: Generally speaking the constitutional provision would prevail.

Senator Schneider: Would it be the courts or the legislature?

Senator Andrist: It would be the attorney general addressing the law suits.

Rep. Griffin: We talked a little bit about the will of the voters. What is going to happen if we were to put this on the ballot and it passes the house? The will of the voters during the next two years as far as passing Measure 3; what will happen to Measure 3?

Senator Andrist: I think Measure 3 will be continue to be enforced until this measure is approved by the voters and becomes active. There is a date in the bill; this is what I am not totally clear on; we would give them an appropriation, whether they would have the whole

biennium to spend that or whether they would have to have it spent or obligated by the date on the bill I believe is the only thing not clear.

Rep. Griffin: On line 22 on page 1 where it says the legislative assembly shall appropriate the earnings; what was the point of including that line?

Senator Andrist: It stipulates whether they appropriate the earnings rather than the Health Department rather than the Public Health District.

Rep. Griffin: No I am asking why the legislature would be required to appropriate any earnings and not the earnings going straight to the State Health Department.

Senator Andrist: they could do it through the Health Department budget if they chose to do it. But they would have to appropriate the money to do it. I worked with legislative council they put it together.

Rep. Kretschmar: Do you know about how much they get in each year or biennium from this tobacco money?

Senator Andrist: I have a spread sheet that has all of that and it is available to the legislative council and there are two sections to the settlement. There is a large section one is the one we have convened for the last 10-15 years and Measure 3 as well as 4038 was strictly that second section. For that section money will flow into the state in 2007 and will continue to flow until 2017 and suppose to accumulate about \$124 million and then no more will come.

Rep. Kretschmar: Do you know what time of the year that money comes?

Rep. Conrad: I don't see that water is ever going to get this money the way this is written because the principal may not be extended before January 2020 and then only for public health programs and only with 2/3 vote; but it will never go to them.

Rep. Kretschmar: I am sorry if I miss quoted. The intent of this section of the tobacco settlement; the primary settlement funds; part of it is for the legislature to appropriate for water

and a piece of it for public health. A part of that it is called Section 9, c 2 and that is dedicated for public health. The legislative council analysis is looking forward that primary settlement will be \$574 million by 2025. That is the one that is right now by legislative decision 45% county school trust fund and 5% for water development and 10% for public health. Went through the bill breakdown for funding purposes.

Rep. Schneider: Senator you mentioned the committee that was formed by the passage of Measure 3. Do you know if the legislature appropriated any funds for that committee at all?

Senator Andrist: It is my understanding we haven't. You killed the appropriation bill. The Senate voted to enable Measure 3 in the amount of \$12 million appropriation. I take ownership in the specifics of this bill; I just wanted to be clear on public policy.

Senator Olafson: (handed out attachment #2) and (testimony #3).

Rep. Griffin: You said this proposed constitutional amendment would have no effect on this. Would you encourage the House and Senate to fully fund Measure 3 for this next biennium until this would be voted on?

Senator Olafson: I believe we have already done that in the Senate. This issue is in the House. Yes my answer is we should fully fund and support the Measure.

Rep. Schneider: What is so wrong with Measure 3 that the legislature so far is failing to implement?

Senator Olafson: I don't know that I can say what was wrong with Measure 3 but I believe this idea has a lot of merit and maybe a better deal than the provisions of Measure 3. The people should be given the change to decide that. Every legislative session is a do over if we didn't have that we could just have the legislature meet once every 25 years and call it good.

Rep. Conrad: This bill would put it in the hands of the public health units individually to decide how they want to address the smoking. Center of Disease Program results have been very good. Was that one of the areas that you objected to?

Senator Olafson: I believe there are no states that has meet the CDC guidelines. North Dakota is ranked fairly high. The effort to stop people from smoking is a very valuable endeavor.

Rep. Koppelman: You served on the committee that heard this resolution. What changes did the judiciary committee consider?

Senator Olafson: The amendments that we made would have been on page 1, line 16 we added after June 30, 2011 that would be the date when the funds would be deposited into this new Public Investment Fund. There was language that named other public health programs which were immunization programs; cancer screening and prevention, diabetes screening and control and aging services. We thought it would be better to take that language out of the resolution because then someone would say why isn't heart disease included in it and any number of other health concerns you could name. Went over more of the changes on the bill.

Rep. Koppelman: Do you know what kind of scrutiny went into the actual drafting of this bill?

Senator Olafson: No I do not.

Rep. Griffin: Was there any discussion on the percentages that would go into tobacco prevention. There is nothing now written to make the money go into the specific locations in the bill.

Senator Olafson: there was not discussion about that. On line 23 of the bill it says for the purpose of providing funds for tobacco prevention and cessation effort and other public health programs. The Measure is pretty clear I don't know how a reasonable person could say we

will take this and spend it all on one narrow public health concern. I think the resolution addresses that.

Opposition:

Dr. James Hughes: Pulmonary Specialist, Bismarck, ND: I consider myself lucky if I go a week without informing someone of the diagnoses of lung cancer. As I watch the youth of ND over this past thirty years continuously learn to smoke. Ninety six percent of smokers begin to smoke before they are a majority or age of 13. We are talking about a pediatric health crisis. This disaster caused by smoking is more than likely going to affect everyone in a close and personal way in their life. I personally have a probable saying we should move money from disease and death to other things to try to control the indirect costs of the management of those diseases. We want to keep people from starting to smoke. There is great success in having people quit smoking over time. We now have more former smokers than smokers in the country. It is important that we realize how important it is to know that second hand smoke is such an issue. We should make a proactive responsible action against tobacco and it should not be blocked by the state. People worldwide are now sensitive when they move into environments characterized by smoking they become personally offended. Imagine getting on a plane and being exposed to second hand smoke. We don't want to be the ash tray of the Midwest.

Rep. Schatz: How many smokers do we have in the state? Do we know?

Dr. Hughes: Approximately 25% of the adult population. 30% of kids graduating from high school.

Rep..Schatz: We have had a lot of succession programs and worked with tobacco funds for a long time. Are we any closer to a cure for lung cancer?

Dr. Hughes: It is increasing expensive. Lung cancer quality of life is there, but steadily declining.

Rep. Koppelman: You asked for opposition on the resolution but you didn't really touch on that. You did touch on general things about smoking and I think we all understand and share your concerns. You did say something about responsibly working toward succession do you feel that the efforts of the Health Department in North Dakota or private organizations and cancer society have not been responsible?

Dr. Hughes: I think we need funds directed towards tobacco control sufficient to have a cultural change in the state. We need to get the issue out in the public environment for a board social discussion. I see that as a function for this money. Once we get acceptance it is time to get on with public information.

Rep. Koppelman: Do you see that as a public information effort?

Dr. Hughes: One is to get kids to want to not start smoking. One is to assist people that have tobacco related disease to quit smoking. Also to get adults to quit smoking. Most smoking starts as children and thus they have addiction.

Rep. Koppelman: Aare you familiar with the legal premise of the law suit and the idea the perhaps part of that was that states have spent a great deal of money on the various things you are talking about. Fighting smoking and tobacco related diseases and therefore the money for those states was to reimburse them for that effort.

Dr. Hughes: Tobacco management issues have cast doubt and delay. The fight against tobacco disease is not the fight against tobacco. The fight against tobacco is killing the addiction.

Rep. Koppelman: You testified that whatever was spent before wasn't effective. Part of the discussion was reimbursement to the states for money they would have spent on other things because they had to spend it on smoking.

Dr. Hughes: I think this has been treated as a way to get money so the state could redirect it into other things without dealing with this subject and future expenditures and I think it has been partially effective. Children seem to be continuing to smoke.

Wanda Rose, President of the ND Nurses Association: (see testimony #4).

Keith Johnson, Administrator for Custer Health: We believe Senator Andrist to be a friend of public health. We are doing some quick math here. Assuming 4% interest the investment of the contribution funds in the trust fund will generate about \$1.4 million a year. Tobacco is our number one killer and we want to help in that effort. If we want to waive this entire

Strategic Contribution Fund we won't be back up to the levels to fund a CDC program until about 2015. We feel that is a good thing which is why we are on this side of the hearing.

Minot receives about \$250,000 from the present settlement. Coupled with the \$30,000 CDC contribution that is \$280,000. That would compare to \$162,000 under the present plan.

Rep. Koppelman: would this plan make the CDC money go away?

Keith Johnson: The CDC program is up for renewal for competitive grants. The present Community Health Trust Fund is already over obligated by the legislature. Right now it is holding up the State Health Department budget because they have over obligated a fund that doesn't exist.

Vivian Shafer, Children's Caucus: I am here today as the public you were talking about.

We voted for a measure after much information was put up and I was of sound mind and of

good judgment of what I wanted to do because this is a children's issue. We need more money to work with children. If we can keep them from not smoking you are not going to have

to worry about a lot of heart disease and all of that. Don't fool around with my vote because I knew what I was voting for. I think I speak for a lot of people and I just wanted you to know.

Kathlee Marskow, Chairman, Tobacco Prevention Advisory Committee: Measure 3 passed by the voters in November directing those funds to be put into a Tobacco Prevention Control Trust Fund to develop and implement a statewide comprehensive CDC based program. SCR 4038 ignores the vote of the people and suggests they need to rethink their vote. The public perceived the most of the tobacco prevention program was being spent on their programs and they were not concerned and surprised to learn that only a small portion of the tobacco prevention settlement funds were actually being spent on tobacco prevention efforts. Research shows that an impact of a fully funded program would reduce adult smoking by more than 1200 the first year. These smoking reductions will continue to grow. Went over a lot of statistics regarding the health care and how this program has assisted in this program. The voters of ND knew what they were doing and that it was time to start savings lives and money and that is why they voted it in back in November.

Rep. Meier: can you visit with the committee on what they are doing currently with tobacco settlement funds? What other states have actually passed measures to address some of these problems.

Kathlee Marskow: I can find that out for you. There is a wide variety over the times when different measures have passed. When states have implemented a CDC evidence based program and then withdrawn funds their rates and deaths and health care costs go back up.

Rep. Schatz: How much is spent on advertising on TV, newspaper and radio for tobacco succession

Kathleen Marskow: My program director has that information. I do know that there is money spent to promote the statewide program that is for prevention.

Rep. Koppelman: Who is the we you were talking about when we put the information together for Measure 3?

Kathleen Marskow: The supporters of Measure 3. It was the key sponsors of the bill. There was a committee that worked on it together with the sponsors.

Rep. Koppelman: States that have spent a lot of money in these efforts and then have withdrawn rates go back up. Do you see this as an eternal expenditure? Do we have to keep spending money forever to accomplish those objectives?

Kathleen Maarskow: For the states that have done a good job, they actually have found that if you do a sustained program you can maintain that once you get those rates down. Our young people grow up thinking everyone smokes and if we can chance that it will make a big difference.

Rep. Conrad: What is sustainable; are we talking two or five years?

Kathleen Maarskow: What makes a program sustainable and being able to be maintained is when you have made significant policy and health changes in your state as well as cultural and how quickly that will occur would be how quickly we can adopt in ND the policy changes that need to occur. The more quickly that happens the more quickly you are going to have a sustainable effort in the state. If I was setting in your shoes and looking at this money I would be saying what are the policy changes we need to make. The quicker you make those the quicker there is going to be money for a lot of other things.

Rep. Koppelman: As others come forward keep your comments to new information and keep your comments to the measure.

Heidi Heitkamp: I was the chair of the tobacco protection committee that designed Measure 3. How much money has already been received on the tobacco settlement dollars? It is biennium and I tell you it is about \$270 million. When I announced the tobacco settlement in

1998 I was told by many people in this body that we would never see a dime of the money. Here we are today talking about these resources and still arguing about whether we should dedicate for those resources to those people who tobacco controls. When I got on the negotiation team I was asked to represent the small states and we were looking for a bigger share of the overall tobacco settlement dollars. I looked at the numbers and said what does ND need to run the CDC based program? We did not increase the strategic fund that you are talking about but the actual annual payment got about a 33% increase as a result of the small state adjustments. Here we are in ND still not living up to a commitment that I made to my colleagues and to other people so understand that this money came with the idea of CDC. I mainly stand here as a lawyer and why you would want to do a do over. Any lawyer in this room will tell you that if this measure passes it basically repeals Measure 3. This would take a dedicated amount of money and dedicating it for a CDC based program. There is no guarantee in this measure that this legislative body would appropriate a dime to tobacco control because in legislative interpretation an and is an or. I think in law you have then violated a constitutional provision. In America today \$35 billion is spent by tobacco users into state funds. Legislatures appropriate less than \$800 million for tobacco control. I think you need to ask whether that is equitable. I also want to say that where this is a do over? I want to question you as lawyers in this room and people who are guardians of the constitution whether a fund that only is funded for nine years belongs in the ND constitution. There is only nine years of funding. Actually less than that by the time you pass it. It will be seven years of funding plus the inappropriate amounts. Does that meet the law in ND constitution? When you can appropriate the principal as well with a two thirds vote. I was asked why you didn't appropriate Measure 3. What the court said in Measure 6 is that we leave that question open on whether appropriation is the exclusive domain of the ND legislature or whether the people

can donate. It is an open legal question. If you continue to not respond adequately to the interest of the people as they voted for this measure the next measure where citizens decided that they had a different priority than those people in the ND Legislature, the next measure will surely accompany it and that issue will be in the courts. So I ask you as representatives of the people to not vote do not pass on this resolution because it is clearly a do over. If the citizens want a do over they can do exactly what you did which is go write a petition, circulate that petition and get it on the ballot, if this is such a mistake let the people fix it if they made the mistake. Thank you for your consideration.

Rep. Kaldor: I am here in opposition of SCR 4038. I trust Senator Andrist when he said our motives are to learn more and find out what people really want. Unfortunately this resolution is not a resolution to learn more about whether or not the people were confused or made a mistake in November. This is really a dramatic change. If you wanted to do a do over I suppose it would be more proper to re introduce the resolution as it was originally placed to find out whether people really mean it. I have a deep problem with the effect of the resolution and it has been placed before us. I am deeply vested in this issue as well. I have worked hard over three sessions especially on issues relating to the effects of second hand smoke and smoke in the workplace. The affects has you all heard are tremendous. The people of ND should not be second guessed. They understood what they were voting for. The measure passed by 54% and people are not sure it was enough? All of us in the room are elected and I don't know how many you would want in your district do a do over after one election. I think we all have to bear in mind we respect the voters in our districts and across the state of ND. I hope the House would resist this measure at this late date and vote against this measure.

Linda Wurtz: AARP: We support Measure 3. Today I stand here to oppose 4038. Although I think this is a terrific conversation that we are having today. I think we are really premature.

The voters who came out and voted for Measure 3 and passed it and have not even had a chance to even experience what they have passed and now you are asking for them to reconsider or look at another model.

Vicki Voldahl Rosenau: Valley City, ND: (see testimony #5).

Rosie Sand: (handed out attachment #6). She explained the handout. We are trying to have a steady income here so we can address the public health issues. I suggest we want to invest in something a little more conservative so I used the 2% is great. You see there it takes quite a while to get up to where they are getting money right now. In 2017 they would get 2.3; if we continue with Measure 3 we would get 2.4 million and that is how you got us to sponsor Measure 3 and that is one of the reasons we did this. Discussed his nephew and his death due to chewing tobacco. (Very emotional). This is not just about smoking; it is about alcohol

and sex and drugs. We need to change and this is one way to start that. These programs just don't affect tobacco, but all these other programs.

Rep. Koppelman: In your chart you are showing under this measure admittedly it is a very small amount of money initially and then as you go forward you are actually showing a point where it's higher in terms of the projected fund of the local health districts, but you are showing a constant in the number of tobacco deaths. Why are you doing this?

Rosie Sand: If you take each column as set of pairs the first column compares how much collection there would be within itself. The second column is if measure 3 tobacco gets you can see that in the second column; and without it it would stay constant because we are not going to spend enough money to do a comprehensive plan and you have heard a the testimony today from the sponsors if something else comes up that is more important they will spend it there and then you will see those rates go up again so I just used those as a constant.

Rep. Koppelman: In 2017 you are spending more under this? Your tobacco deaths on the chart are the same and by 2029 for the next 12 years you are spending more than by your project on Measure 3 and it still stays constant?

Rosie Sand: Look at the top above those two columns is projected funding to local health districts. Under Measure 3 we project the funding will be \$2.3 million every year as a constant. Under 4038 because the principal goes up there will be more interest and that is why that increases and then when you get to 2018 is when the principal stops growing. That is because this fund only goes on for 21 years. Maybe I didn't understand your question?

Rep. Koppelman: How can you spend more money eventually under 4038 according to your chart and have no reduction in tobacco under 4038 in those out years.

Rosie Sand: It shows then; you heard the testimony from the sponsors, if something comes up with the swine flu or HB1 or whatever it is then money will go elsewhere.

Neutral testimony: None

Hearing closed.

Written testimony was submitted by Dr. Herbert J. Wilson. (see testimony #7)

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SCR 4038

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 04/30/09

Recorder Job Number: 12419

Committee Clerk Signature *Lou Engelson*

Minutes:

Chairman Koppelman opened the hearing on SCR 4038.

Chairman Koppelman: Members of the committee, we have the resolution we heard.

Rep. Schatz: I have some amendments I want to offer to SCR 4038.

Chairman Koppelman: Would you care to explain your amendment ?

Rep. Schatz: This basically replaces this one with 1347.

Chairman Koppelman: 1347 came from judiciary. The senate did away with that.

Rep. Schneider: There are other bills out there. Is there another place to tack it on to? Is this really what you want to do?

Chairman Koppelman: The question is if we want the people to decide this, what better way than to put it before them.

Rep. Schatz: I move we accept amendments to 4038.

Rep. Meier: I'll second it.

Rep. Uglem: Is there an explanation what this is? I haven't heard it.

Chairman Koppelman: This essentially is the same language that was in HB 1347 which incorporates some of current law and the law that we have right now that says you can't spend public money on a campaign for or against a candidate. This would add the provision that you

also can't spend public money campaigning for or against a ballot measure which is what 1347 proposed to do.

Rep. Meier: When drafting this legislation, are you aware of what other states have done in reference to this type of language?

Chairman Koppelman: We are, and it is a little bit unique with regard to states that have ballot measures because not every state is an initiative and referendum state like North Dakota. We did amend 1347 with some language that kind of clarifies this isn't intended to bridle anybody, keep them from speaking out, whether in a public or private capacity, having a forum.

Rep. Hatlestad: In the last situation we saw the University System use the email system extensively to rally the troops. Under this law it would be illegal. Is that correct?

Rep. Griffin: We did hear this in Judiciary on this issue. I think the status of the email would basically be decided by the court.

Chairman Koppelman: I think it would be safe to say, that something that was an orchestrated effort, that utilized the public email system, would probably be inappropriate, maybe illegal. I think if you are sending an email to a friend, I don't think anybody would bother with something like that. The same would be true if you made 5000 photocopies and put \$5000 taxpayer funded stamps on envelopes and sent them out. The intent is not to worry about those incidentals and that's why it's got language in there that is clear to show that incidental use is not the target here. The Attorney General's opinion also says that.

Rep. Kretschmar: If I had my druthers, I'd kill 4038. Give it a do not pass as is. I don't think this language that we have in the amendment should be in our constitution. In a statute that's

fine.

Chairman Koppelman: Any further discussion. Seeing none, all those in favor of the motion to amend SCR 4038 with the amendment numbered 0401 signify by saying aye. Those opposed. The ayes have it. Motion carries. We have before us the amended version of SCR 4038. What are the committee's wishes.

Rep. Schatz: I move a do pass on the amended version of 4038.

Rep. Meier: I'll second.

Chairman Koppelman: Moved and seconded. Further discussion.

Rep. Griffin: Even though I voted for this version as a statute on the floor, I'm going to oppose it because I think it should remain a statute and not a constitutional amendment.

Chairman Koppelman: If there's nothing further we'll ask the clerk to call the roll on a do pass recommendation as amended.

5 yes, 4 no, 0 absent and not voting. Rep Schatz was assigned to carry the resolution.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SCR 4038

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 05/01/09

Recorder Job Number: 12427

Committee Clerk Signature

Lou Engelson

Minutes:

Chairman Koppelman opened the hearing on SCR 4038.

Rep. Schatz: I move to reconsider our amendments from yesterday and have them withdrawn.

Rep. Hatlestad: Second.

Chairman Koppelman: Any discussion? Seeing none, all those in favor signify by saying aye. Motion carries. We have SCR 4038 before us without the house amendments as we received it yesterday.

Rep. Hatlestad: I move a do not pass.

Rep. Griffin: Second.

Rep. Schneider: I'm disappointed in the committee.

Chairman Koppelman: Further discussion from the committee. Seeing none, I will ask the clerk to call the roll on a do not pass recommendation on engrossed SCR 4038.

9 yes, 0 no, 0 absent and not voting. Rep. Kretschmar was assigned to carry the resolution.

VR
4/30/09
182

PROPOSED AMENDMENTS TO ENGROSSED SENATE CONCURRENT
RESOLUTION NO. 4038

Page 1, line 1, after "resolution" replace the remainder of the resolution with "to create and enact a new section to the Constitution of North Dakota, relating to the use of public property for political purposes.

STATEMENT OF INTENT

This measure prohibits the use of state or political subdivision property or services for political purposes.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed new section to the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election in 2010, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to the Constitution of North Dakota is created and enacted as follows:

1. A person may not use any property belonging to or leased by, or any service that is provided to or carried on by, either directly or by contract, the state or a political subdivision, for any political purpose. For the purposes of this section:

a. (1) "Political purpose" means any activity undertaken in support of or in opposition to a statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure, or 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 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.

(2) "Political purpose" does not include:

(a) Undertaking activities in the performance of a duty of a public office or a position taken in any bona fide news story, commentary, or editorial;

(b) Discussing or taking a position at a public meeting in support of or in opposition to a measure or amendment;
or

(c) Hosting a public forum at which support of or opposition to a measure or amendment is presented.

- b. "Property" includes real or personal property, money, or any other item of value. However, this section may not be construed to prohibit any candidate, political party, committee, or organization from using any public building for such political meetings as may be required by law, or to prohibit a candidate, party, committee, or organization from hiring the use of any public building for any political purpose if the lease or hiring is otherwise permitted by law.
 - c. "Services" includes the use of an employee during regular working hours for which the employee has not taken annual or sick leave or other compensatory leave.
3. This section does not limit the freedom of speech of any officer or employee of the state or a political subdivision in that individual's personal capacity."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SCR 4038, as engrossed: Constitutional Revision Committee (Rep. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SCR 4038 was placed on the Sixth order on the calendar.

Page 1, line 1, after "resolution" replace the remainder of the resolution with "to create and enact a new section to the Constitution of North Dakota, relating to the use of public property for political purposes.

STATEMENT OF INTENT

This measure prohibits the use of state or political subdivision property or services for political purposes.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed new section to the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election in 2010, in accordance with section 16 of article IV of the Constitution of North Dakota.

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1. A person may not use any property belonging to or leased by, or any service that is provided to or carried on by, either directly or by contract, the state or a political subdivision, for any political purpose. For the purposes of this section:
 - a. (1) "Political purpose" means any activity undertaken in support of or in opposition to a statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure, or 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 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.
 - (2) "Political purpose" does not include:
 - (a) Undertaking activities in the performance of a duty of a public office or a position taken in any bona fide news story, commentary, or editorial;
 - (b) Discussing or taking a position at a public meeting in support of or in opposition to a measure or amendment;
or
 - (c) Hosting a public forum at which support of or opposition to a measure or amendment is presented.

- b. "Property" includes real or personal property, money, or any other item of value. However, this section may not be construed to prohibit any candidate, political party, committee, or organization from using any public building for such political meetings as may be required by law, or to prohibit a candidate, party, committee, or organization from hiring the use of any public building for any political purpose if the lease or hiring is otherwise permitted by law.
 - c. "Services" includes the use of an employee during regular working hours for which the employee has not taken annual or sick leave or other compensatory leave.
3. This section does not limit the freedom of speech of any officer or employee of the state or a political subdivision in that individual's personal capacity."

Renumber accordingly

Date: _____

Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4038

**HOUSE CONSTITUTIONAL
REVISIONS COMMITTEE**

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP DNP DP AS AMEND DNP AS AMEND

Motion Made By Schatz Seconded By Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Conrad		
Vice Chairman Kretschmar			Rep. Griffin		
Rep. Hatlestad			Rep. Schneider		
Rep. Meier					
Rep. Schatz					
Rep. Uglem					

Total Yes _____ No _____

Absent _____

Floor Carrier: _____

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

move non-side amendments passed UU

Date: 05/01/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4038

**HOUSE CONSTITUTIONAL
REVISIONS COMMITTEE**

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP DNP DP AS AMEND DNP AS AMEND

Motion Made By Hatlestad Seconded By Griffin

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Rep. Conrad	✓	
Vice Chairman Kretschmar	✓		Rep. Griffin	✓	
Rep. Hatlestad	✓		Rep. Schneider	✓	
Rep. Meier	✓				
Rep. Schatz	✓				
Rep. Uglem	✓				

Total Yes 9 No 0

Absent 0

Floor Carrier: Kretschmar

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

REPORT OF STANDING COMMITTEE

SCR 4038, as engrossed: Constitutional Revision Committee (Rep. Koppelman, Chairman) recommends **DO NOT PASS** (9 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SCR 4038 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SCR 4038

Testimony on SB 4038

Senate Judiciary Committee – April 28, 2009

Sen. John Andrist, District 2

It is not proper to characterize Measure 3 as a mistake, even though most of us in this body believe it was flawed. And it is not proper, in my opinion, to circumvent the decision of the voters, whether or not we believe it was a good one.

SB 4038 does neither. It simply gives voters the opportunity to take a second look at their decision. It is late in this session to introduce a new bill, but in a larger sense 4038 does nothing to change public policy. The voters will vote on the bill after it has had a lot of public airing.

Section IX (c) (2) of the tobacco settlement fund – let's call it the second tobacco settlement fund so as not to confuse it with the primary settlement fund that has been around for more than a decade. This second fund will have about \$40 million at the end of this biennium and about \$125 million by 2017, when it ceases to provide new money.

SB 4038 would create a new public health trust fund containing all this money (not previously spent). The legislature would be required to appropriate interest earnings from the trust fund to North Dakota's public health districts. They in turn could each use it for the public health priorities they choose. The money could all be spent on tobacco cessation, or parts of it could be spent for immunization needs, cancer screening and prevention, diabetes screening and control, aging service, or other needs.

It would be dedicated in its entirety to public health, although after ten years the legislature could invade the principal with a two-thirds vote of both its Senate and House members.

SB 4038 has nothing to say about pending legislation in the 61st session, a contentious issue that has still not been resolved in the House. What it would do, if passed, is save us from fighting the same battle over and over again in future sessions. In the same way it would be good for Measure 3 supporters. If they should reject 4038 at the polls we would have an even more clear directive of their intent when Measure 3 was approved in 2008.

Let me repeat for emphasis, if we pass this bill we will not be circumventing Measure 3. Only the voters may or may not decide to do that.

One more thought. If we believe Measure 3 is flawed and has some constitutional questions within any of its provisions, don't we have a responsibility to give our voters a second look.

I believe we do. We correct any number of our own actions in every session. Shouldn't voters have the same opportunity? I believe they should.

#1

Testimony on SB 4038

House Constitutional Revision Committee – April 30, 2009

Sen. John Andrist, District 2

It is not proper to characterize Measure 3 as a mistake, even though most of us in this body believe it had flaws. And it is not proper, in my opinion, to circumvent the decision of the voters, whether or not we believe it was a good one, and I have been a critic of the House in this regard.

SB 4038 does neither. It simply gives voters the opportunity to take a second look at their decision. It is late in this session to introduce a new bill, but in a larger sense 4038 does nothing to change public policy. If you can approve it, the voters will vote on the bill after it has had a lot of public airing.

Section IX (c) (2) of the tobacco settlement fund – let's call it the second tobacco settlement fund so as not to confuse it with the primary settlement fund that has been around for more than a decade. This second fund will have about \$40 million at the end of this biennium and about \$125 million by 2017, when it ceases to provide new money.

SB 4038 would create a new public health trust fund containing all this money, less whatever is spent in the next biennium in implementing Measure 3. The legislature would be required to appropriate interest earnings from the trust fund to North Dakota's public health districts. They in turn could each use it for the public health priorities they choose. The money could all be spent on tobacco cessation, or parts of it could be spent for other public health needs, which each district could prioritize for its own needs.

It would be dedicated in its entirety to public health, although after ten years the legislature could invade the principal with a two-thirds vote of both its Senate and House members. Depending on prevailing interest rates, it should generate \$3.5 to \$4 million in the first biennium, growing to \$11 to \$12 million by 2017, and each biennium going forward.

SB 4038 has nothing to say about Measure 3 or the legislation for that measure which may or may not be addressed by the House. What it would do, if passed, is save us from fighting the same battle over and over again in future sessions. In the same way it would be good for Measure 3 supporters. If they should reject 4038 at the polls we would have an even more clear directive of their intent when Measure 3 was approved in 2008.

Let me repeat for emphasis, if we pass this bill we will not be circumventing Measure 3. Only the voters may or may not decide to do that.

One more thought. If we believe Measure 3 is flawed and has some constitutional questions within any of its provisions, don't we have a responsibility to give our voters a second look.

I believe we do. We correct any number of our own actions in every session. A large majority of our bills are amendments to existing law. Times and circumstances change. We get new

information. Floods and tornados occur. So many things can impact the issues we address in those amendments. Computers change our lives and our needs.

Shouldn't voters have the same opportunity to review what they have done? They don't even get a chance to amend, like we do. They have to take it with a straight up and down yes or no.

If you really believe in empowering voters, and I do, why would we want to deny them an opportunity to rethink what they have done, when we believe we have a good plan worth their consideration.

Trust the voters. Please give this bill a do pass.

#2

ANALYSIS OF THE TOBACCO SETTLEMENT TRUST FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS (REFLECTING THE 2009-11 BIENNIUM EXECUTIVE BUDGET RECOMMENDATION)

	2007-09 Biennium		2009-11 Biennium	
Beginning balance		\$0		\$0
Add estimated revenues				
Tobacco settlement revenues collected to date	\$36,481,077 ¹		\$0	
Projected tobacco settlement revenues	21,940,594		43,881,191	
Total estimated revenues		58,421,671 ²		43,881,191 ²
Total available		\$58,421,671 ^{3,4}		\$43,881,191 ^{3,4}
Less estimated expenditures and transfers				
Transfers to the community health trust fund	\$5,842,167		\$4,388,119	
Transfers to the common schools trust fund	26,289,752		19,746,536	
Transfers to the water development trust fund	26,289,752		19,746,536	
Total estimated expenditures and transfers		58,421,671 ⁴		43,881,191 ⁴
Estimated ending balance		\$0		\$0

¹As of November 2008 the state has received two tobacco settlement payments totaling \$36,481,077 for the 2007-09 biennium. The state has received total tobacco settlement collections of \$233,156,352.

²Revenues - 1999 House Bill No. 1475 (NDCC 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.

In the November 2008 general election, voters approved initiated measure No. 3 that amends NDCC Section 54-27-25 to provide that a portion of tobacco settlement funds received by the state be deposited in the newly created tobacco prevention and control trust fund rather than the entire amount in the tobacco settlement trust fund. Tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement, which continue in perpetuity, will continue to be deposited into the tobacco settlement trust fund and 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. Tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement, which began in 2008 and continues through 2017, will be deposited beginning in 2009 in the tobacco prevention and control trust fund. The amount received under subsection IX(c)(2) of the Master Settlement Agreement for 2008 was \$13,797,729, which, because it was received prior to passage of the measure is included in the tobacco settlement revenues collected to date above. Remaining tobacco settlement trust fund revenues have been estimated based on the Office of Management and Budget revised estimated collections less anticipated strategic contribution payments of \$13,797,729 per year, which were estimated based on the actual amount of the 2008 strategic contribution payment. The measure also provides that, if in any biennium the tobacco prevention and control trust fund does not have adequate funding for the comprehensive plan, money may be transferred from the water development trust fund to the tobacco prevention and control trust fund in an amount determined necessary by the executive committee to adequately provide for the comprehensive plan.

³In 2006 certain tobacco companies began reducing their tobacco settlement payments to North Dakota contending that the Master Settlement Agreement allows for the payments to be reduced if they lose sales to small cigarette makers that did not participate in the agreement and if states do not enforce laws intended to make smaller tobacco companies set aside money for legal claims. The Attorney General's office has filed a lawsuit against the tobacco companies to collect the full payment. Due to the uncertainty of the lawsuit, the Office of Management and Budget has further reduced the estimated tobacco settlement revenues for the

2007-09 biennium by 5 percent, or \$1,842,182, in the first year and by 3 percent, or \$1,105,309, in the second year. The Office of Management and Budget has reduced the estimated tobacco settlement revenues for the 2009-11 biennium by 3 percent or \$2,210,618 for the biennium. The total original estimated tobacco settlement collections, including payments to be received under both subsection IX(c)(1) and subsection IX(c)(2) of the Master Settlement Agreement, and the total estimated collections as revised by the Office of Management and Budget to reflect anticipated volume adjustments and legal challenges are:

Biennium	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	46,310,010
2005-07	51,271,214	43,654,951
2007-09	82,231,080	70,739,775
2009-11	82,231,080	71,476,648
2011-17 (\$82,231,080/\$73,687,266 per biennium)	246,693,240	221,061,798
2017-25 (\$58,591,490/\$52,503,832 per biennium)	234,365,960	210,015,328
Total	\$866,801,136	\$769,795,657

Initiated measure No. 3 approved by voters in the November 2008 general election will result in the following estimated allocation of the revised estimated collections of the tobacco settlement payments through 2025:

	Actual and Estimated Total Tobacco Settlement Proceeds	Estimated Payments Under Master Settlement Agreement Subsection IX(c)(2) Deposited in the Tobacco Prevention and Control Trust Fund	Allocation of Actual and Estimated Payments Under Master Settlement Agreement Subsection IX(c)(1)		
			Common Schools Trust Fund	Water Development Trust Fund	Community Health Trust Fund
Actual payment April 2008	\$36.5 million	N/A	\$16.4 million	\$16.4 million	\$3.7 million
Estimated payment April 2009	35.7 million	\$13.8 million	9.9 million	9.9 million	2.1 million
Estimated 2009-11 biennium	71.5 million	27.6 million	19.8 million	19.8 million	4.3 million
Estimated 2011-13 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 million
Estimated 2013-15 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 million
Estimated 2015-17 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 million
Estimated 2017-19 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2019-21 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2021-23 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2023-25 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Total	\$574.8 million	\$124.2 million	\$202.9 million	\$202.9 million	\$44.8 million

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 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.

In the November 2008 general election, voters approved initiated measure No. 3 that amended NDCC Section 54-27-25 to establish a tobacco prevention and control trust fund. The measure provides for a portion of tobacco settlement funds received by the state to be deposited in a new fund rather than the entire amount in the tobacco settlement trust fund. Tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement, which continue in perpetuity, will continue to be deposited into the tobacco settlement trust fund and 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. Tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement, relating to strategic contribution payments which began in 2008 and continue through 2017, will be deposited beginning in 2009 into the newly created tobacco prevention and control trust fund.

The tobacco settlement payment received by the state in April 2008 was the first payment that included funds relating to subsection IX(c)(2) of the agreement. This payment was received prior to the approval of the measure and was deposited in the tobacco settlement trust fund and disbursed as provided for in NDCC Section 54-27-25 prior to amendment by the measure. Future tobacco settlement payments will be deposited in the tobacco settlement trust fund and the tobacco prevention and control trust fund pursuant to Section 54-27-25, as amended by the measure.

Testimony of Senator Curtis Olafson

SCR 4038 would require that a proposed new section to Article X of the constitution be placed on the ballot in the 2010 election. The language in SCR 4038 would establish a public health investment trust fund in the state treasury. This fund would consist of the tobacco settlement dollars obtained by the state under section 9 © (2) of the 1998 court ordered tobacco Master Settlement Agreement. It is important to note that there are two separate sections to the court order, those being section 1 and section 2. This measure would not affect the money that the state will receive from section 1, and that money would continue to be deposited into the tobacco settlement trust fund, and interestingly, those payments will continue in perpetuity. The section 2 money on the other hand does not continue in perpetuity. The first payment under section 2 was approximately \$13.8 million and was received in April of 2008 and these section 2 payments will end in 2017. These payments will be approximately \$27.6 million per biennium. The April 2008 payment was deposited in the tobacco settlement trust fund as specified under section 54-27-25, which was created by HB 1475 in the 1999 legislative session. Future tobacco settlement payments received under section 1 will be deposited in the tobacco settlement trust fund and those received under section 2 will be deposited in the tobacco prevention and control trust fund pursuant to Section 54-27-25, as amended by measure 3 in the 2008 election. If the language contained in SCR 4038 is approved in the 2010 election, a new fund will be created in the state treasury and the section 2 moneys received will be deposited in that fund after the measure becomes effective. The measure would also specify that only the earnings from the fund may be appropriated by the Legislature prior to 2020, after which time the principal of the fund may be expended by a 2/3 vote of the Legislature. The appropriations from the fund must be directed to our local public health units and they are already in existence on a statewide basis. These public health units take a variety of forms from single-county, to multi-county to a combined city/county structure. Under the provisions of 4038, these public health units would have the authority to use the funds for tobacco prevention and cessation efforts and other public health programs, depending on the local needs. I believe that the process outlined in this resolution has a lot of merit and is a new and creative way in which to manage the tobacco settlement dollars received under section 2, and I believe that the voters should be

given an opportunity to consider this new and creative idea. I am sure some will object to not having all the money to spend at once, but I believe it makes sense to grow the fund so we have a guaranteed source of money available for the long term to ensure that we can continue to address what will unquestionably be an ongoing challenge. I think that is more responsible than allowing the money to potentially be used up as fast as it comes in. No matter how much money you throw at the problem of smoking addiction, there will always be a significant number of smokers. When it comes to tobacco cessation efforts, there has to be a point of diminishing returns on how much money is effective in addressing the problem. It is important to note that there are many valuable resources available to assist those who want to quit smoking, including the American Cancer Society, the American Lung Association, and the Office of the Surgeon General to name just a few. It is also important to remember that no one forces people to smoke and no one can force anyone to stop smoking. We as a state can't hold a gun to their head and force them to quit. I encourage your support of the resolution and ask that we put this new and creative idea in front of the citizens of North Dakota in the 2010 election.

Testimony on SCR 4038
Thursday, April 30, 2009
Wanda Rose PhD, RN, BC
North Dakota Nurses Association

#2

Chairman Koppleman and members of the Constitutional Revision Committee

I am Wanda Rose, President of the North Dakota Nurses Association. The North Dakota Nurses Association (NDNA) opposes SCR 4038. SCR 4038 goes against the wishes of the North Dakota voters. NDNA participated in the collection of signatures to place Measure #3 on the November ballot. During the signature collection it was made clear that a tobacco control advisory committee and executive committee would be created to develop a plan for tobacco control and prevention.

As I collected signatures, the people I approached carefully read the measure proposal prior to signing. In fact I did have some who chose not to sign because an advisory and executive committee was being created.

Therefore, I do believe individuals who signed to place the measure on the ballot and the citizens who voted did read the measure carefully and did understand what they voted for. Also prior to the election there were a number of TV, radio and newspaper ads that clearly described the measure which included the establishment of an advisory and an executive committee.

Also the first sentence in Measure #3 as printed on the ballot stated: **This measure would establish tobacco prevention and control advisory committee and an executive committee; develop and fund comprehensive statewide tobacco prevention and control plan; and create a tobacco prevention and control trust fund to receive tobacco settlement dollars to be administered by the executive committee.** The public was informed.

I urge a do not pass on SCR 4038

I don't believe it is for the legislators to second guess the voters.

Thank You

#5

TESTIMONY Re: SCR 4038
Hearing 1:30 p.m. – April 30, 2009
House Constitutional Revision Committee (Prairie Room)
Vicki Voldal Rosenau

My fully-justified outrage at the bad government committed via Wednesday's Senate vote on 4038 remains fresh. Some who have sought and gained positions of power spoke and acted on Wed. in stunningly UNinformed ways that, if unchecked, will do great harm both to the people's future health AND to the future of our free system of government.

First, **It is completely inaccurate to claim that passing 4038 would not nullify the effectiveness of the plebiscite known as Measure 3.** Today's *Forum* editorial clearly articulated the TRUTH, that 4038 is nothing-more-than "**The latest scheme to upend the results of Measure 3**" Surrounding false claims to the opposite is **a remarkable lack of information**: If the pushers of 4038 would have taken the time to study the available materials explaining exactly why/how Measure 3 can effectively prevent disease and reduce future healthcare costs, they would have KNOWN that the Measure 3 program CANNOT do ANY of that during the mere 18-24 months remaining before they would force a 2010 vote on 4938. The Measure 3 program is a proven-effective, SCIENCE-based initiative, and the germane science clearly indicates that the comprehensive intervention program will need to be in full effect for at least 7 years before North Dakota can reap its preventive benefits. As a conscientious public health professional, I personally will not support spending "Measure 3 money" (even if this tobacco-industry-led Leg. does appropriate it!) to pursue that path IF 4038 might terminate the comprehensive program in less than 2 years! With the exception of the cessation-assistance component, probably all of those expenditures would prove to have been completely wasted if the comprehensive program were not fully sustained well beyond 2010. I would rather have that money sent to feed starving children in Bangladesh than cynically wasted on setting up a program that would never be fully implemented but would be largely dismantled again in a few short months!

Here's another colossal, oft-repeated inaccuracy and indicator of shamefully-inadequate knowledge regarding Measure 3 and effective tobacco control science: **The push-4038 team persist in referring to the "Measure 3 comprehensive, CDC-based tobacco prevention and control program" as a mere "cessation program."** Apparently, they've taken it upon themselves to prepare detailed legislation on a topic about which they know practically nothing. "Cessation" constitutes only ONE out of FIVE of the indispensable components that make up the Measure 3 comprehensive program! The five essential components work in an integrated programmatic structure, and these 5 must function TOGETHER to produce the life-saving synergistic effects of a comprehensive tobacco control program! Anyone who grasped even just that one basic concept would never refer to the intent of Measure 3 as "cessation." This is all clearly and succinctly laid out in the CDC's manual, "*Best Practices Comprehensive Tobacco Control Programs--2007.*" Since North Dakota's Measure 3 program IS faithfully based on the CDC manual, that manual has been repeatedly referenced

and even handed out at legislative hearings, but it appears that the pushers of 4038 have not bothered to glance at it. Otherwise, they would not MIScharacterize (and belittle) Measure 3's program as a meager "cessation" program!

It appears that SOME ND legislators cherish their ignorance of the science of tobacco prevention and cessation. Indeed, why do some persist in falsely setting themselves up as experts in this particular science? Why have the thoroughly-trained public-health professionals not even been consulted in making key decisions such as proposing 4038? When legislators are called upon to authorize road construction, they do not suddenly prop themselves up as construction experts and debate what kind of steel to employ in building the bridges. No, you bring in qualified, reputable engineers, just as you should. Likewise, the state's qualified, reputable tobacco-control professionals should always be consulted on ANY decisions relating to tobacco prevention and cessation.

This brings us to the damage that would be done to the American system by adoption of SCR 4038. Yes, I really mean that; it is not an overstatement. In fact, this is probably the biggest reason for which passing 4038 would be 100% wrong for everyone. By doing this, by thumbing their noses again at the people's official vote, supporters of 4038 would destroy yet-another link in the fragile chain of **Citizen Trust In Their Government**. Right now, in the history of the USA, we cannot afford that. **Our system simply does not work without an actively participating citizenry** - yet, have you read the polls recently? A frightening percentage of U.S. citizens have absolutely no faith in the idea that THEIR wishes are ever conveyed through the elective process to the policymaking tables. Because of that, many millions have totally abdicated their responsibility to become informed and participate in government at all. And because of THAT, it has become very, very easy for wealthy special interests to seize control of vital decisions at all levels of government. [Do you really need for me to recite any part of the seemingly-infinite litany of such abuses?] Well, by scorning the people's 2008 vote for Measure 3, the 4038 vote further exacerbated voter cynicism/apathy in ND. You see, even if it could be objectively established that 4038 would save more lives/healthcare dollars than would Measure 3 (which of course CANNOT be established), as conscientious defenders of The American Way, ND legislators should be wise-enough to vote down 4038 anyway -- because it would cynically thwart the people's prior vote on Measure 3, and thus would help to make the healthy future of our free system of government even more tenuous than it was before 1:00 PM on Wednesday, April 29, when the Senate voted on 4038.

SCR 4038 represents Bad Government from every possible angle. It should be defeated.

Respectfully submitted:

Vicki Voldal Rosenau

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#6

Comparison of Funding/Costs/Savings between Measure 3 and SCR 4038

Fiscal year	Projected Funding to Local Health Districts at		Projected Tobacco Deaths		Projected Youth Tobacco Use		Projected Financial Costs	
	Measure 3	SCR 4038	Measue 3	SCR 4038	Measue 3	SCR 4038	Measue 3	SCR 4038
2009	\$ 2,300,000.00	\$ 276,000.00	900	900	21.0%	21%	\$ 250,000,000.00	\$250,000,000
2010	\$ 2,300,000.00	\$ 552,000.00	877	900	20.5%	21%	\$ 243,750,000.00	\$250,000,000
2011	\$ 2,300,000.00	\$ 828,000.00	854	900	20.0%	21%	\$ 237,500,000.00	\$250,000,000
2012	\$ 2,300,000.00	\$ 1,104,000.00	831	900	19.5%	21%	\$ 231,250,000.00	\$250,000,000
2013	\$ 2,300,000.00	\$ 1,380,000.00	808	900	19.0%	21%	\$ 225,000,000.00	\$250,000,000
2014	\$ 2,300,000.00	\$ 1,656,000.00	785	900	18.5%	21%	\$ 218,750,000.00	\$250,000,000
2015	\$ 2,300,000.00	\$ 1,932,000.00	762	900	18.0%	21%	\$ 212,500,000.00	\$250,000,000
2016	\$ 2,300,000.00	\$ 2,208,000.00	739	900	17.5%	21%	\$ 206,250,000.00	\$250,000,000
2017	\$ 2,300,000.00	\$ 2,484,000.00	716	900	17.0%	21%	\$ 200,000,000.00	\$250,000,000
2018	\$ 2,300,000.00	\$ 2,760,000.00	693	900	16.5%	21%	\$ 193,750,000.00	\$250,000,000
2019	\$ 2,300,000.00	\$ 2,760,000.00	670	900	16.0%	21%	\$ 187,500,000.00	\$250,000,000
2020	\$ 2,300,000.00	\$ 2,760,000.00	647	900	15.5%	21%	\$ 181,250,000.00	\$250,000,000
2021	\$ 2,300,000.00	\$ 2,760,000.00	624	900	15.0%	21%	\$ 175,000,000.00	\$250,000,000
2022	\$ 2,300,000.00	\$ 2,760,000.00	601	900	14.5%	21%	\$ 168,750,000.00	\$250,000,000
2023	\$ 2,300,000.00	\$ 2,760,000.00	578	900	14.0%	21%	\$ 162,500,000.00	\$250,000,000
2024	\$ 2,300,000.00	\$ 2,760,000.00	555	900	13.5%	21%	\$ 156,250,000.00	\$250,000,000
2025	\$ 2,300,000.00	\$ 2,760,000.00	532	900	13.0%	21%	\$ 150,000,000.00	\$250,000,000
2026	\$ 2,300,000.00	\$ 2,760,000.00	509	900	12.5%	21%	\$ 143,750,000.00	\$250,000,000
2027	\$ 2,300,000.00	\$ 2,760,000.00	486	900	12.0%	21%	\$ 137,500,000.00	\$250,000,000
2028	\$ 2,300,000.00	\$ 2,760,000.00	463	900	11.5%	21%	\$ 131,250,000.00	\$250,000,000
2029	\$ 2,300,000.00	\$ 2,760,000.00	440	900	11.0%	21%	\$ 125,000,000.00	\$250,000,000
Difference	\$2,760,000 more in local public health funding		4830 North Dakotans not dying				\$1.3125 billion in savings	
Measure 3 provides millions more in funding for local public health and does so immediately			Measure 3 saves thousands more North Dakota lives		Measure 3 Reduces youth smoking by nearly 50%		Measure 3 results in \$1.3 billion in savings to North Dakota citizens	

#7

TESTIMONY Re: SCR 4038
Hearing 1:30 p.m. – April 30, 2009
House Constitutional Revision Committee
(Prairie Room)

Dr. Herbert J. Wilson
Representing the
American Lung Association of North Dakota

Imagine the feeling of helplessness and despair when a patient is diagnosed with lung cancer. Today, tobacco use is the number one cause of lung cancer and lung disease. Tobacco use also causes strokes, heart attacks and many other cancers.

Measure 3 is the path to get ahead of the helplessness and despair through prevention and cessation. With Measure 3 many people will never have to face that helplessness and despair. Other states have proven it can be done. We can do it here as well.

SCR 4038 guts Measure 3. Please give it a do not pass.

Respectfully submitted:
Herbert J. Wilson, MD
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