

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2223

2005 SENATE EDUCATION

SB 2223

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2223

Senate Education Committee

☐ Conference Committee

Hearing Date 01/31/05

Tape Number	Side A	Side B	Meter #
1	X		1-2486
2	X		1,310-1805
Committee Clerk Signature <i>Patty Wilkins</i>			

Minutes: **relates to the distribution of tobacco settlement moneys and tobacco tax revenue.**

**Senator Layton Freborg**, Chairman called the meeting to order on SB 2223

**Testimony in support of the Bill:**

**Senator Klein** introduced SB 2223, explaining the bill was brought forward by a citizen.

**William Jackson** from Dickinson came up with the idea for the bill. See written testimony.

**Senator Flakoll-** What type of test would be made available to determine whether or not a student is tobacco free?

**William Jackson-** There would be a urine test, similar to what the insurance industry has used for years.

**Senator Flakoll-** Is there a problem if the student works in the bar with second hand smoke?

**William Jackson-** I've learned recently that testing results can now distinguish between second hand smoke, and the actual use of tobacco.

**Senator Flakoll-** You want to use the interest off of the money that is generated?

**William Jackson-** No. I want to use it all- the capital and the interest.

**Senator Seymour-** Have you researched this idea in other states, or did you come up with the idea on your own?

**William Jackson-** I came up with this idea on my own.

**Testimony in opposition of the Bill:**

**Keith Johnson, representing the ND Public Health Association** is neutral on the bill. See written testimony.

**Senator Flakoll-** When you run these tests does it also detect smokeless tobacco?

**Keith Johnson-** Yes.

**Senator Taylor-** Is there a way to distinguish between second hand smoke and direct smoke?

**Keith Johnson-** I'm not aware of that.

**Dale Frink- ND State Engineer and Chief Engineer Secretary for the Water Commission** appeared in opposition. See written testimony.

**Bev Nielson, with the ND School Board Association** appeared in opposition to the bill. She opposes the loss of dollars to the school lands trust fund. This trust fund provides much needed revenue to the schools. Schools are already counting on receiving these tobacco settlement funds for their budgets.

**Kathleen Mangskau, Director of the Division of Tobacco Prevention and Control for the ND Dept. of Health** appeared before the committee. See written testimony.

**Senator Taylor-** Has your department given any consideration on an incentive program that attacks smoking from another angle?

**Kathleen Mangskau-** The Department does have cessation services and programs to city, county, and state employees at a reduced cost. There is only one other state that has a similar program to the proposed idea. Most of our young people start smoking in high school, if we prevent them from starting smoking in high school, most never will take it up.

**Senator Flakoll-** How do you find out what percentage of the students smoke? Do you survey them?

**Kathleen Mangskau-** The percentage of students that smoke in ND is determined by a youth risk behavior survey, that is conducted every 2 years. It provides reliable information on students that not only smoke, but also use other forms of tobacco.

**Gloria Lokken, President of the North Dakota Education Association** appeared before the committee in opposition. This bill would take away from our K-12 funding, we can't afford this. Our students and school districts are depending on that money.

**Jerry Junst** appeared on behalf of the ND League of Cities. A lot of commitments have been made based on the expectations of receiving those funds, along with a lot of work in the distribution formula.

**Dean Bard** appeared on behalf of the ND small organized schools in opposition to the bill. The moneys would otherwise go to the school's trust funds, which need the funds very badly.

**Senator Freborg** closed the hearing on SB 2223  
discussion later on in the afternoon

**Senator Taylor :** I was actually intrigued by the idea, it did a nice job on the testimony, it's too bad that the money is so closely guarded, I don't know that it is necessarily workable for us, but I give him credit.

**Senator G. Lee :** My thoughts are similar I guess, it's good that people are thinking about and unique and different ways of handling issues. How it fits into our scheme of handling things it just doesn't work.

**Senator G. Lee,** Made a motion for a DO NOT PASS on SB 2223

Seconded By, **Senator Erbele**

Further discussion on the motion?

**Senator Flakoll :** The thing that would be the biggest problem would be the 10% that is used for tobacco cessation program this would essentially wipe that out, it would shift the concentration of efforts from anyone 7 years old and on up. It would be 17-21 year olds, so we may not be doing enough early cessation if we would take that and move the money, so that is one of the major concerns that I know, there others certainly with education and water, but that 10% goes contrary with the intent of the 10 %.

**Senator Seymour :** Sounds like they objected to the bill via-email.

**Senator Flakoll :** There is also some disconnect with what the bill said with the intent of the person who hatched the idea. As I read the bill it basically took the money and used the interest income earned to fund that and if you take and pull out through those numbers and take the 36 million dollars, and divide that over the two yrs. of the biennium and at 5 % interest over that # of students that we have in the state, it would only come to 22.60 per student. As the bill reads now, doesn't seem that this would even pay for the tobacco test. Not sure what the urine test cost.

**There being no other discussion roll call vote was taken. vote: 6-0-0**

**Senator G. Lee,** will carry the bill.

The meeting was adjourned.

# FISCAL NOTE

Requested by Legislative Council  
01/18/2005

Bill/Resolution No.: SB 2223

**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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>			(\$36,148,000)	\$36,148,000		
<b>Expenditures</b>						
<b>Appropriations</b>						

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

General fund revenues would be decreased by \$36,148,000 in 2005-07 as all of the cigarette and tobacco revenue would be deposited into the nico-ed fund.

The following special funds would be decreased by the following:

Community Health Trust Fund   -\$4,594,413  
Common Schools Trust Fund    -\$20,674,860  
Water Development Trust Fund   -\$20,674,860

The total of the above amounts, \$82,092,133 would instead be deposited into the nico-ed fund.

**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.*

General fund revenues would be decreased by 36,148,000 in 2005-07 as all of the cigarette and tobacco revenue would be deposited into the nico-ed fund.

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Community Health Trust Fund   -\$4,594,413  
Common Schools Trust Fund    -\$20,674,860  
Water Development Trust Fund   -\$20,674,860

The total of the above amounts, \$82,092,133 would instead be deposited into the nico-ed fund.

**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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive*

*budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

<b>Name:</b>	Pam Sharp	<b>Agency:</b>	OMB
<b>Phone Number:</b>	328-4606	<b>Date Prepared:</b>	01/20/2005



Roll Call Vote #:

**BILL/RESOLUTION NO. 2223**

Senate SENATE EDUCATION

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Lee Seconded By Erbe

[illegible]

Total (Yes) 6 No 0

Absent 

Floor Assignment Sen-Lee

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

**REPORT OF STANDING COMMITTEE (410)**  
January 31, 2005 1:15 p.m.

**Module No: SR-20-1432**  
**Carrier: G. Lee**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2223: Education Committee (Sen. Freborg, Chairman) recommends DO NOT PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2223 was placed on the  
Eleventh order on the calendar.

2005 TESTIMONY

SB 2223

**TESTIMONY ON SENATE BILL 2223**

**Senate Education Committee**

**Dale L. Frink  
North Dakota State Engineer, and  
Chief Engineer-Secretary to the  
North Dakota State Water Commission**

**January 31, 2005**

Mr. Chairman and Members of the Senate Education Committee, I am Dale Frink, North Dakota State Engineer, and Chief Engineer-Secretary to the North Dakota State Water Commission. I appear before you today in opposition to Senate Bill 2223.

Senate Bill 2223 would eliminate the transfer of Tobacco Settlement Trust Fund dollars into the Community Health Trust Fund and the Water Development Trust Fund. My testimony will focus on the effects of eliminating the transfer into the Water Development Trust Fund.

The executive budget recommendation for the State Water Commission includes revenue of \$20,674,860 from the Tobacco Settlement Trust Fund. Of this amount, \$12.77 million is allocated to pay debt on bond issues. The remaining \$7.9 million is budgeted to pay for operation costs of the State Water Commission. The bonding authorization and designation of the Water Development Trust Fund as the source of repayment is contained in North Dakota Century Code ch. 61-02.1. Eliminating transfers into the Water Development Trust Fund would require the State of North Dakota to find other funds to make the bond payments and pay for agency operations.

I recommend a do not pass on Senate Bill 2223.

Thank you.

## **Testimony**

### **Senate Bill 2223**

#### **Senate Education Committee**

**Monday, January 31, 2005; 9 a.m.**

#### **North Dakota Department of Health**

Good morning, Chairman Freborg and members of the Senate Education Committee. My name is Kathleen Mangskau, and I am director of the Division of Tobacco Prevention and Control for the North Dakota Department of Health. I am here today to provide testimony in opposition to Senate Bill 2223 relating to the distribution of the tobacco settlement moneys.

Ten percent of Tobacco Master Settlement Agreement funds are allocated to the Community Health Trust Fund. The programs funded by the Community Health Trust Fund are effective and are saving lives and money in North Dakota.

One program funded by the Community Health Trust Fund is the Community Health Grant Program, which funds school and community tobacco-prevention and other health-prevention services in all 28 local public health units across the state. Since the inception of this program in 2001, we have seen a significant drop in youth tobacco-use rates in the state. The percentage of youth who are current smokers decreased from 41 percent in 1999 to 30 percent in 2003. That means there are 9,000 fewer youth tobacco users today, resulting in future health-care savings of more than \$100 million. Adult smoking rates have also declined, from 23.2 percent in 2000 to 20.5 percent in 2003. That means there are nearly 12,000 fewer adult smokers in the state since 2000. At \$3,516 per smoker, this results in around \$42 million in direct health-care and lost-productivity savings per year. In addition, the Community Health Grant Program supports statewide tobacco cessation services through a state tobacco quitline available free of charge to all North Dakota residents.

The Community Health Trust Fund also supports the Dental Loan Repayment Program for dentists who practice in areas of need. Access to oral-health services is a serious concern because of the shortage of dentists in the state, especially in rural areas. Currently, nine dentists are enrolled in the loan repayment program. Removing the money from the Community Health Trust Fund would mean the service contracts with these dentists would have to be discontinued and repayment of their educational loans would stop.

I will also provide information about the reliability of tests for the presence of nicotine. Measuring cotinine levels measures nicotine levels and is usually determined

by testing urine samples. When a smoker stops smoking, it takes about five to seven days for the cotinine to clear his or her system. A nonsmoker exposed to secondhand smoke also has elevated cotinine levels, which will usually take five to seven days to clear his or her system, as well. That means a student who is a nonsmoker may test positive for nicotine if he or she is exposed to secondhand smoke.

This concludes my testimony. We urge your opposition to this bill to preserve programs that are working. I am happy to answer any questions you may have.

# NICO-ED

**a program idea  
by William Jackson**

The NICO-ED program will help thousands of students pay for college including those among the 23% of our high school graduates who choose, each year, to NOT attend a four-year college, or a two-year college, or a vocational-trade school.

Surprised? It's true, one out of every 4 or 5 North Dakota graduates chooses to not continue schooling. Fact is, only 50.6% of our high school graduates attend a four-year college. That means that almost half our students choose to NOT GET a baccalaureate degree.

In this day and age when higher education is a must, it's a travesty that just more than half our students even attend a four-year institution, meaning less than half our high school students will ever graduate from college.

The NICO-ED program makes it so that all North Dakota high school graduates can finance their education whether they want to attend a 4-year school, a 2-year school, or a trade school.

THERE'S MORE.

The NICO-ED program puts a DRAMATIC dent into youth smoking.

Let's not take credit away from our current program of channeling 10 percent of the tobacco settlement money into health programs. Currently, 80 percent of this money, or 8 percent of the total, goes into programs designed to curb cigarette smoking.

Over the past four years, it's gotten results, too. According to one survey, 11% of our youth have quit smoking. That means that 9000 youth have put out the nicotine sticks.

The problem is that those numbers mean that 89% of our smoking youth still light up! In other words, a program that we have put millions of dollars into has failed to stop 74,000 youth from smoking.

By all means, continue this program of education. Continue it while adopting ANOTHER punch that will dramatically add to those positive numbers. NICO-ED will do just that.

Bill 2223 opens the door for millions of dollars to be put into an account each year. This money, along with interest, would be given as grants to North Dakota students who choose to continue their education in-state past high school. Twice a year these students would receive grants based on test results that they are clean of nicotine.

Participating students would receive random notices, staggered twice a year, giving them three days to submit to a commonly given smoking test. If they pass, they get the grant. If they fail, they don't. However, failing to get the grant, does not mean they can't retest and get the money the next time around. That's an added incentive for smoking youth to KICK THE HABIT.

Students who choose to live in-state following the completion of their higher education do not have to pay back the grant. Those leaving here within four years have to pay back into the NICO-ED fund.

That's an incentive for educated people to stay and find work in North Dakota. This would result in our state having such a strong pool of qualified workers that we could attract high paying employers.

Additionally, the program is a powerful incentive that keeps parents in-state, helping to solve what has become known as our OUT-MIGRATION problem. To move away means their children would miss out on thousands of dollars of free education. That's like throwing away thousands of dollars of tax free income. Not too many people would be so inclined.

FURTHER, the program strengthens our institutions of higher education by keeping North Dakota students in North Dakota.

To fund NICO-ED, giving each high school graduate a yearly thousand dollar grant for up to four years, which by North Dakota standards is a significant part of the cost of one-year of post secondary education, we need a 35 million dollar fund. That's based on the current enrollment of 35,000 students attending grades 9-12.

Where can we get this money? We could get some of it from the tobacco settlement which, this year alone, yields 42 million dollars. The problem here is that all this money is spoken for, and it's going to be difficult to get anyone to give up their piece of the pie.

So, let's look at another source, that is our state cigarette tax and our tobacco tax that puts about 20 million dollars into the state coffer every year. If we increase the cigarette tax from around 40 cents a pack to 80 cents a pack, that totals about 40 million dollars each year, more than enough to immediately start handing out grants.

Then, as the number of youthful smokers declines, and they will under this program, consider upping the tax on cigarettes.



5

If we cannot increase the taxes on cigarette products today, then, at least, half-fund the program by channeling the current tax into the NICO-ED fund.

What a program this will be!

The NICO-ED fund would drastically reduce youthful smoking.

The NICO-ED fund would open the doors of education to all North Dakota high school students.

The NICO-ED fund would keep our college educated employees here.

The NICO-ED fund would keep their parents here.

The NICO-ED fund would financially strengthen our colleges and vo-tech schools.

The NICO-ED fund would help curb emigration from our state.

NICO-ED puts the state in the forefront of the nation as a leader, not just a follower. That's important.

When you have a state with just over 600,000 residents, it's necessary to adopt creative legislation like NICO-ED. We either become creative, or, our numbers will continue to drop.

**SB2223 – Neutral testimony.**  
**Keith Johnson, ND Public Health Assn.**  
**January 31, 2005**

This bill has about as much positive as negative from the vantage point of the public's health. On the positive side, this distribution formula is probably no worse than the formula we presently use. That doesn't mean it makes sense – it's just no worse. It has the added advantage of purportedly spending all the tobacco settlement dollars on activities related to tobacco use cessation, even if it is just a scholarship program. This is an improvement over our present program.

The problems lie in the fact that students who work in the hospitality industry will never test nicotine free. They smoke every day they work through contact with environmental tobacco smoke. Their blood will always have nicotine in it, and so they would not qualify for the scholarships because of their work in smoky environments. Their exposure to ETS will not be improved by this bill, but then, neither does our present arrangement.

The other problem lies in the fact that programs to reduce smoking that are actually starting to work, in spite of the fact that they receive only ten percent of the settlement dollars, would shrivel up and die altogether if all their funding is taken away by this bill. I think that would be a very satisfactory outcome for the folks who want to sell more cigarettes to our youth, not less.

Thank you for your consideration.

Keith Johnson  
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