

**THIRD ENGROSSMENT  
with Conference Committee Amendments**

Sixty-first  
Legislative Assembly  
of North Dakota

**REENGROSSED SENATE BILL NO. 2004**

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide an appropriation for defraying the expenses of the state  
2 department of health; to provide for a grant from the state water commission; to provide  
3 legislative intent; to provide for a legislative council study; to amend and reenact sections  
4 23-42-01, 23-42-02, 23-42-04, 23-42-05, 23-42-07, and 54-27-25 of the North Dakota Century  
5 Code, relating to the comprehensive tobacco prevention and control plan, advisory committee,  
6 and executive committee, plan review, and the tobacco settlement trust fund; to repeal chapter  
7 23-38 of the North Dakota Century Code, relating to the community health grant program and  
8 advisory committee; and to declare an emergency.

9 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

10 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the  
11 funds as may be necessary, are appropriated out of any moneys in the general fund in the state  
12 treasury, not otherwise appropriated, and from special funds derived from federal funds and  
13 other income, to the state department of health for the purpose of defraying the expenses of the  
14 state department of health, for the biennium beginning July 1, 2009, and ending June 30, 2011,  
15 as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
18 Salaries and wages	\$37,709,131	\$7,152,737	\$44,861,868
19 Operating expenses	44,036,539	599,255	44,635,794
20 Capital assets	1,817,383	(4,115)	1,813,268
21 Grants	58,017,776	2,396,934	60,414,710
22 Tobacco prevention	8,919,346	(3,350,156)	5,569,190
23 WIC food payments	<u>17,550,000</u>	<u>7,513,375</u>	<u>25,063,375</u>
24 Total all funds	\$168,050,175	\$14,308,030	\$182,358,205

1	Less estimated income	<u>150,595,277</u>	<u>10,435,934</u>	<u>161,031,211</u>
2	Total general fund	\$17,454,898	\$3,872,096	\$21,326,994
3	Full-time equivalent positions	331.50	12.00	343.50

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO**

**SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

8	<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
9	Antiviral stockpile	\$2,010,135	\$0
10	Vaccines to public health	2,000,000	0
11	Legend prescription health	22,000	0
12	Emergency medical services assessment	<u>30,000</u>	<u>0</u>
13	Total general fund	\$4,062,135	\$0

**SECTION 3. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS -**

**ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the state department of health, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

20	Water quality grants	\$194,300
21	Superfund arsenic trioxide project grants	7,000,000
22	Clean diesel grants (provided to the department	1,730,000
23	of public instruction)	
24	Clean water state revolving loan fund administration	769,564
25	Drinking water state revolving loan fund administration	780,000
26	Stop violence against women	511,661
27	Women, infants, and children	<u>61,800</u>
28	Total federal funds	\$11,047,325

The state department of health may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts

1 appropriated in this section, for the period beginning with the effective date of this Act and  
2 ending June 30, 2011.

3 Any federal funds appropriated under this section are not a part of the agency's 2011-13  
4 base budget. Any program expenditures made with these funds will not be replaced with state  
5 funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer  
6 available.

7 **SECTION 4. ENVIRONMENT AND RANGELAND PROTECTION FUND.** The  
8 estimated income line item included in section 1 of this Act includes \$272,310, or so much of  
9 the sum as may be necessary, to be made available to the state department of health from the  
10 environment and rangeland protection fund, for the biennium beginning July 1, 2009, and  
11 ending June 30, 2011. This amount includes \$50,000 for a grant to the North Dakota  
12 stockmen's association environmental services program.

13 **SECTION 5. EMERGENCY MEDICAL SERVICES OPERATIONS - FUNDING FROM**  
14 **INSURANCE TAX DISTRIBUTION FUND - REPORT TO LEGISLATIVE COUNCIL.** The  
15 estimated income line item in section 1 of this Act includes \$2,750,000 from the insurance tax  
16 distribution fund for the biennium beginning July 1, 2009, and ending June 30, 2011. Of this  
17 amount, \$2,250,000 is for grants to emergency medical services operations as provided in  
18 chapter 23-40 and \$500,000 is for a grant to contract with an organization to:

- 19 · Develop, implement, and provide an access critical ambulance service operations  
20 assessment process for the purpose of improving emergency medical services delivery;  
21 · Develop, implement, and provide leadership development training;  
22 · Develop, implement, and provide a biennial emergency medical services recruitment drive;  
23 and  
24 · Provide regional assistance to ambulance services to develop a quality review process for  
25 emergency medical services personnel and a mechanism to report to medical directors.

26 The state department of health shall report to the legislative council on the use of the funding  
27 provided under this section. The department shall require recipients of grants under this  
28 section to provide information on the use of funds received as necessary to provide the report  
29 to the legislative council.

30 **SECTION 6. FEDERAL 319 NONPOINT PROGRAM MATCHING FUNDS - STATE**  
31 **WATER COMMISSION GRANT TO THE STATE DEPARTMENT OF HEALTH.** The state

1 water commission shall provide a grant of \$200,000 from its 2009-11 biennium appropriation  
2 approved by the sixty-first legislative assembly to the state department of health to be used as  
3 matching funds for the federal 319 nonpoint program, for the biennium beginning July 1, 2009,  
4 and ending June 30, 2011.

5 **SECTION 7. INTENT - INDIRECT COST RECOVERIES.** Notwithstanding section  
6 54-44.1-14, the state department of health may deposit indirect cost recoveries in its operating  
7 account.

8 **SECTION 8. EXEMPTION.** The \$200,000, of which \$150,000 is from the community  
9 health trust fund and \$50,000 is from the general fund, appropriated for colorectal screening  
10 grants, as contained in section 3 of chapter 4 of the 2007 Session Laws, is not subject to the  
11 provisions of section 54-44.1-11, and any unexpended funds from these appropriations are  
12 available and may be expended during the biennium beginning July 1, 2009, and ending  
13 June 30, 2011.

14 **SECTION 9. LEGISLATIVE COUNCIL STUDY - IMMUNIZATION PROGRAM.** During  
15 the 2009-10 interim, the legislative council shall consider studying the state immunization  
16 program. The study, if conducted, must identify pharmacists' or other providers' ability and  
17 interest in immunizing children and include a review of the effect of the program on public  
18 health units, including billing, billing services, fee collections, and uncollectible accounts. The  
19 legislative council shall report its findings and recommendations, together with any legislation  
20 required to implement the recommendations, to the sixty-second legislative assembly.

21 **SECTION 10. CONTINGENT FULL-TIME EQUIVALENT POSITION REDUCTION.** If  
22 funding for tobacco programs is not available to the state department of health for tobacco  
23 programs, the department may not fill full-time equivalent positions associated with this funding,  
24 for the biennium beginning July 1, 2009, and ending June 30, 2011.

25 **SECTION 11. AMENDMENT.** Section 23-42-01 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **23-42-01. Definitions.** As used in this chapter:

- 28 1. "Advisory committee" is the nine-member tobacco prevention and control advisory  
29 committee responsible to develop the comprehensive plan.  
30 2. "Comprehensive plan" means a comprehensive statewide tobacco prevention and  
31 control program that is consistent with the centers for disease control and

1            prevention best practices for comprehensive tobacco prevention and control  
2            programs ~~and does not duplicate the work of the community health grant program~~  
3            ~~created in chapter 23-38.~~

4            3. "Executive committee" means the three-member committee selected by the  
5            advisory committee and charged with implementation and administration of the  
6            comprehensive plan.

7            4. "Tobacco prevention and control fund" consists of all principal and interest of the  
8            tobacco prevention and control trust fund established by section 54-27-25.

9            **SECTION 12. AMENDMENT.** Section 23-42-02 of the North Dakota Century Code is  
10          amended and reenacted as follows:

11            **23-42-02. Tobacco prevention and control advisory committee - Membership -**  
12          **Terms - Duties - Removal.**

13            1. The advisory ~~board~~ committee consists of nine North Dakota residents appointed  
14            by the governor for three-year terms as follows:

15            a. A practicing respiratory therapist familiar with tobacco-related diseases;

16            b. Four nonstate employees who have demonstrated expertise in tobacco  
17            prevention and control;

18            c. A practicing medical doctor familiar with tobacco-related diseases;

19            d. A practicing nurse familiar with tobacco-related diseases;

20            e. A youth between the ages of fourteen and twenty-one; and

21            f. A member of the public with a previously demonstrated interest in fostering  
22            tobacco prevention and control.

23            2. The governor shall select the youth and public member independently; the  
24            respiratory therapist from a list of three nominations provided by the North Dakota  
25            society for respiratory care; the four tobacco control experts from a list of two  
26            nominations per member provided by the North Dakota public health association's  
27            tobacco control section; the medical doctor from a list of three nominations  
28            provided by the North Dakota medical association; and the nurse from a list of  
29            three nominations provided by the North Dakota nurses association. The governor  
30            must make the appointments within three weeks of receiving the respective list of  
31            nominees. If the governor fails to make an appointment within three weeks, the

- 1 association that provided the list of nominees shall select the committee member.
- 2 In the initial appointments for the advisory committee, the governor shall stagger
- 3 the terms of the members so that the terms of three members expire each fiscal
- 4 year and that three members are appointed each year by June thirtieth.
- 5 Accordingly, the governor's initial appointments, in some instances, must be for
- 6 terms less than three years. The governor shall fill vacancies for the unexpired
- 7 term as provided in this section.
- 8 3. No individual may serve more than two consecutive three-year terms. However,
- 9 terms of less than three years are not considered in determining an individual's
- 10 eligibility for reappointment.
- 11 4. A quorum of the advisory committee is required to conduct business, but the
- 12 advisory committee may conduct a meeting with less than a quorum present. A
- 13 quorum is a majority of the members of the committee. Any action taken requires
- 14 a vote of the majority of the members present at the meeting.
- 15 5. The advisory ~~board~~ committee shall:
- 16 a. Select the executive committee;
- 17 b. Fix the compensation of the advisory committee and the executive committee.
- 18 However, compensation may not exceed compensation allowed to the
- 19 ~~legislature~~ legislative assembly. Advisory and executive committee members
- 20 are entitled to reimbursement for mileage and expenses as provided for state
- 21 officers in addition to any compensation provided;
- 22 c. Develop the initial comprehensive statewide tobacco prevention and control
- 23 program ~~that includes~~, including support for cessation interventions,
- 24 community and youth interventions, and health communication; and
- 25 d. Evaluate the effectiveness of the plan and its implementation and, before
- 26 April first of each year, propose any necessary changes to the plan to the
- 27 executive committee.
- 28 6. The governor may remove any member of the advisory committee for malfeasance
- 29 in office, but the advisory committee is not subject to section 54-07-01.2.
- 30 7. No nomination to, or member of, the advisory committee ~~shall~~ may have any past
- 31 or current affiliation with the tobacco industry or any industry, contractor, agent, or

1 organization that engages in the manufacturing, marketing, distributing, sale, or  
2 promotion of tobacco or tobacco-related products.

3 **SECTION 13. AMENDMENT.** Section 23-42-04 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **23-42-04. Powers and duties of the executive committee.** To implement the  
6 purpose of this chapter and, in addition to any other authority granted elsewhere in this chapter,  
7 to support its efforts and implement the comprehensive plan, the executive committee may  
8 employ staff and fix their compensation, accept grants, property, and gifts, enter contracts,  
9 make loans, provide grants, borrow money, lease property, provide direction to the state  
10 investment board for investment of the tobacco prevention and control fund, and take any  
11 action that any private individual, corporation, or limited liability company lawfully may do  
12 except as restricted by the provisions of this chapter. The executive committee shall prepare  
13 and submit a biennial budget to the office of management and budget and the legislative  
14 assembly.

15 **SECTION 14. AMENDMENT.** Section 23-42-05 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **23-42-05. Development of the comprehensive plan.** The advisory committee shall  
18 develop the initial comprehensive plan within one hundred eighty days of the initial meeting of  
19 the advisory committee. The comprehensive plan must be funded at a level equal to or greater  
20 than the centers for disease control and prevention recommended funding level. Funding for  
21 the comprehensive plan must supplement and may not supplant any funding that in the  
22 absence of this chapter would be or has been provided for the community health trust fund or  
23 other health initiatives.

24 **SECTION 15. AMENDMENT.** Section 23-42-07 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **23-42-07. Audit.** At least once a biennium, the executive committee shall provide for  
27 an independent review of the comprehensive plan to assure that the comprehensive plan is  
28 consistent with the centers for disease control and prevention best practices. The executive  
29 committee shall report the results of that review to the governor and to the state health officer  
30 on or before September first in each odd-numbered year.

1           **SECTION 16. AMENDMENT.** Section 54-27-25 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **54-27-25. Tobacco settlement trust fund - Interest on fund - Uses.**

4           1. There is created in the state treasury a tobacco settlement trust fund. The fund  
5 consists of the tobacco settlement dollars obtained by the state under  
6 subsection IX(c)(1) of the master settlement agreement and consent agreement  
7 adopted by the east central judicial district court in its judgment entered December  
8 28, 1998 [Civil No. 98-3778] in State of North Dakota, ex rel. Heidi Heitkamp v.  
9 Philip Morris, Inc. Except as provided in subsection 2, moneys received by the  
10 state under subsection IX(c)(1) must be deposited in the fund. Interest earned on  
11 the fund must be credited to the fund and deposited in the fund. The principal and  
12 interest of the fund must be allocated as follows:

13           a. Transfers to a community health trust fund to be administered by the state  
14 department of health. The state department of health may use funds as  
15 appropriated for community-based public health programs and other public  
16 health programs, including programs with emphasis on preventing or reducing  
17 tobacco usage in this state. Transfers under this subsection must equal ten  
18 percent of total annual transfers from the tobacco settlement trust fund ~~of~~  
19 ~~which a minimum of eighty percent must be used for tobacco prevention and~~  
20 ~~control.~~

21           b. Transfers to the common schools trust fund to become a part of the principal  
22 of that fund. Transfers under this subsection must equal forty-five percent of  
23 total annual transfers from the tobacco settlement trust fund.

24           c. Transfers to the water development trust fund to be used to address the  
25 long-term water development and management needs of the state. Transfers  
26 under this subsection must equal forty-five percent of the total annual  
27 transfers from the tobacco settlement trust fund.

28           2. There is created in the state treasury a tobacco prevention and control trust fund.  
29 The fund consists of the tobacco settlement dollars obtained by the state under  
30 section IX(c)(2) of the agreement adopted by the east central judicial district court  
31 in its judgment entered December 28, 1998 [Civil No. 98-3778] in State of North

1           Dakota, ex rel. Heidi Heitkamp v. Philip Morris, Inc. Interest earned on the fund  
2           must be credited to the fund and deposited in the fund. Moneys received into the  
3           fund are to be administered by the executive committee for the purpose of creating  
4           and implementing the comprehensive plan provided for under chapter 23-42. If in  
5           any biennium, the tobacco prevention and control trust fund does not have  
6           adequate dollars to fund a comprehensive plan, the treasurer shall transfer money  
7           from the water development trust fund to the tobacco prevention and control trust  
8           fund in an amount equal to the amount determined necessary by the ~~executive~~  
9           ~~committee~~ legislative assembly to fund a comprehensive plan.

10          3. Transfers to the funds under this section must be made within thirty days of receipt  
11           by the state.

12          **SECTION 17. REPEAL.** Chapter 23-38 of the North Dakota Century Code is repealed.

13          **SECTION 18. EMERGENCY.** Sections 3, 11, 12, 13, 14, 15, and 16 of this Act are  
14          declared to be an emergency measure.