

ANALYSIS OF THE TOBACCO PREVENTION AND CONTROL TRUST FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS

	2007-09 Biennium Actual		2009-11 Biennium Estimated	
Beginning balance		\$0		\$14,107,486
Add revenues				
Tobacco settlement revenues collected to date	\$14,138,011 ¹		\$12,274,393 ¹	
Projected tobacco settlement revenues			13,797,729 ²	
Investment income	8,290		345,463	
Total revenues		14,146,301		26,417,585 ³
Total available		\$14,146,301		\$40,525,071
Less expenditures and transfers				
Tobacco Prevention and Control Executive Committee expenditures	\$38,815 ⁴		\$12,882,000 ⁴	
Total expenditures and transfers		38,815		12,882,000
Ending balance		\$14,107,486		\$27,643,071

¹As of May 4, 2010, the state has received two tobacco settlement payments totaling \$33,091,258 for the 2009-11 biennium, of which \$20,816,865 was deposited in the tobacco settlement trust fund and \$12,274,393 was deposited in the tobacco prevention and control trust fund. To date, the state has received total tobacco settlement collections of \$305,399,942, including \$265,189,809 under subsection IX(c)(1) of the Master Settlement Agreement and \$40,210,133 under subsection IX(c)(2) of the Master Settlement Agreement. Of the \$305,399,942, \$278,987,538 has been deposited into the tobacco settlement trust fund and \$26,412,404 has been deposited into the tobacco prevention and control trust fund.

²Estimated payments for the remainder of the 2009-11 biennium are based on the amount received in 2008 of \$13,797,729.

³Initiated measure No. 3 approved in the November 2008 general election 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. The 2009 Legislative Assembly in Section 39 of House Bill No. 1015 provided that any money deposited in the water development trust fund under North Dakota Century Code Section 54-27-25 may only be spent pursuant to legislative appropriation.

The measure 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	\$36.4 million	N/A	\$16.4 million	\$16.4 million	\$3.6 million
Actual payment April 2009	39.2 million	\$14.1 million	11.3 million	11.3 million	2.5 million
Estimated 2009-11 biennium	68.8 million	26.1 million	19.2 million	19.2 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	\$575.5 million	\$123.0 million	\$203.7 million	\$203.7 million	\$45.1 million

⁴Because the tobacco prevention and control trust fund was established in December 2008, no expenditures or transfers were appropriated from the fund for the 2007-09 biennium; however, the 2009 Legislative Assembly in Section 36 of House Bill No. 1015 appropriated \$62,403 from the fund to the Tobacco Prevention and Control Executive Committee for expenses of the committee for the period beginning January 1, 2009, and ending June 30, 2009. The committee's actual expenditures for the 2007-09 biennium totaled \$38,815. In addition, Section 35 of House Bill No. 1015 appropriated \$12,882,000 from the tobacco prevention and control trust fund to the Tobacco Prevention and Control Executive Committee for the purpose of providing a level of funding that will meet the annual level recommended by the Centers for Disease Control and Prevention for North Dakota as published in its *Best Practices for Comprehensive Tobacco Control* for the 2009-11 biennium.

NOTE: The estimated June 30, 2011, balance made at the end of the 2009 legislative session was \$29,163,873. The decrease in the estimated balance of \$1,520,802 is due to lower than anticipated tobacco settlement revenues.

FUND HISTORY

The tobacco prevention and control trust fund was created as a result of voter approval of initiated measure No. 3 in the November 2008 general election. The measure added seven new sections to the North Dakota Century Code and amended Section 54-27-25 to establish the Tobacco Prevention and Control Advisory Committee and an executive committee, develop and fund a 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 measure provides for the advisory committee, appointed by the Governor, to develop the initial comprehensive plan and select an executive committee responsible for the implementation and administration of the comprehensive plan. The initiated measure became effective 30 days after the election (December 4, 2008).

Tobacco settlement payments received by the state under the Master Settlement Agreement are derived from two subsections of the Master Settlement Agreement. Subsection IX(c)(1) of the Master Settlement Agreement provides payments on April 15, 2000, and on April 15 of each year thereafter in perpetuity, while subsection IX(c)(2) of the Master Settlement Agreement provides for additional strategic contribution payments that begin on April 15, 2008, and continue each April 15 thereafter through 2017. Section 54-27-25, created by 1999 House Bill No. 1475, did not distinguish between payments received under the separate subsections of the Master Settlement Agreement and provided for the deposit of all tobacco settlement money received by the state into the tobacco settlement trust fund. Money in the fund, including interest, is transferred within 30 days of deposit in the fund as follows:

- 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.

The measure provides for a portion of tobacco settlement dollars received by the state to 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 will continue to be deposited in the tobacco settlement trust fund and allocated 10 percent to the community health trust fund (with 80 percent used for tobacco prevention and control), 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 will be deposited into the tobacco prevention and control trust fund. Interest earned on the balance in this fund will be deposited in the fund. The fund will be administered by the executive committee created by the measure for the purpose of creating and implementing the comprehensive plan.

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. The 2009 Legislative Assembly in Section 39 of House Bill No. 1015 provided that any money deposited in the water development trust fund under Section 54-27-25 may only be spent pursuant to legislative appropriation.

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 Section 54-27-25 prior to amendment by the measure. In 2009 tobacco settlement payments began to 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.