

TOBACCO SETTLEMENT PROCEEDS, MEASURE TO ESTABLISH A NEW TOBACCO USE PREVENTION AND CONTROL PROGRAM, AND THE FUNDING EFFECTS OF THE MEASURE

This memorandum includes information on allocations of tobacco settlement proceeds, information on the measure to be voted on in the November 2008 general election that would establish a new tobacco use prevention and control program, and information on the funding effects of the measure.

TOBACCO SETTLEMENT PROCEEDS

North Dakota Century Code (NDCC) Section 54-27-25, created by 1999 House Bill No. 1475, provides for the deposit of all tobacco settlement money received by the state into the tobacco settlement trust fund. Money in the fund, including interest, must be 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 state has received tobacco settlement proceeds totaling \$196.7 million from 1999 (the fund's inception) through 2007, resulting in transfers of \$88.5 million each to the common schools trust fund and the water development trust fund and \$19.7 million to the community health trust fund. The following schedule provides the actual and estimated tobacco settlement proceeds received and projected to be received by the state and the resulting transfers to the community health trust fund, common schools trust fund, and water development trust fund from 2008 to 2025 (the anticipated final payment date):

	Tobacco Settlement Proceeds	Current Law Allocation of Proceeds		
		Common Schools Trust Fund	Water Development Trust Fund	Community Health Trust Fund
Actual payment April 2008	\$36.5 million	\$16.4 million	\$16.4 million	\$3.7 million
Estimated payment April 2009	36.8 million	16.6 million	16.6 million	3.6 million
Estimated 2009-11 biennium	73.7 million	33.2 million	33.2 million	7.3 million
Estimated 2011-13 biennium	73.7 million	33.2 million	33.2 million	7.3 million
Estimated 2013-15 biennium	73.7 million	33.2 million	33.2 million	7.3 million
Estimated 2015-17 biennium	73.7 million	33.2 million	33.2 million	7.3 million
Estimated 2017-19 biennium	52.5 million	23.6 million	23.6 million	5.3 million
Estimated 2019-21 biennium	52.5 million	23.6 million	23.6 million	5.3 million
Estimated 2021-23 biennium	52.5 million	23.6 million	23.6 million	5.3 million
Estimated 2023-25 biennium	52.4 million	23.5 million	23.5 million	5.4 million
Total	\$578.0 million	\$260.1 million	\$260.1 million	\$57.8 million

MEASURE TO ESTABLISH A NEW TOBACCO USE PREVENTION AND CONTROL PROGRAM

Tobacco settlement payments 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 payments that begin on April 15, 2008, and continue each April 15 thereafter through 2017. North Dakota Century Code Section 54-27-25 does not distinguish between payments received under the separate subsections of the Master Settlement Agreement. The section provides:

1. For the deposit of all money received by the state pursuant to the judgment and all money received by the state for enforcement of the judgment in the tobacco settlement trust fund.
2. Interest earned on the money in the tobacco settlement trust fund must be retained in the fund. Tobacco settlement revenues collected to date have been transferred immediately to

the appropriate trust funds; therefore, no interest has been earned.

3. The principal and interest of the fund must be allocated 10 percent to the community health trust fund, 45 percent to the common schools trust fund, and 45 percent to the water development trust fund.

Initiated measure No. 3 would add seven new sections to the North Dakota Century Code and amend NDCC Section 54-27-25 to establish a 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. If the initiated measure is approved, these provisions will become effective 30 days after the November 2008 general election (December 4, 2008).

The measure provides for an 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 provides for a portion of tobacco settlement dollars 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 would 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 would be deposited into the newly created tobacco prevention and control trust fund. Interest earned on the balance in this fund would be deposited in the fund. The fund would be administered by the executive committee created by the initiated 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 tobacco settlement payment received by the state in April 2008 was the first payment that included any funds relating to Subsection IX(c)(2) of the agreement. This payment totaled \$36,481,077, of which \$13,797,729 related to Subsection IX(c)(2) and \$22,683,348 to Subsection IX(c)(1). Actual and estimated tobacco settlement collections to be received pursuant to each subsection of the agreement for the period 2008 through 2025, the anticipated final payment date, are as follows:

	Payments Under Master Settlement Agreement Subsection IX(c)(1)	Payments Under Master Settlement Agreement Subsection IX(c)(2)	Actual Total Payment and Office of Management and Budget Revised Estimated Collections
Actual payment April 2008	\$22,683,348	\$13,797,729	\$36,481,077
Estimated payment April 2009	23,045,904	13,797,729	36,843,633
Estimated 2009-11 biennium	46,091,808	27,595,458	73,687,266
Estimated 2011-13 biennium	46,091,808	27,595,458	73,687,266
Estimated 2013-15 biennium	46,091,808	27,595,458	73,687,266
Estimated 2015-17 biennium	46,091,808	27,595,458	73,687,266
Estimated 2017-19 biennium	52,503,832	N/A	52,503,832
Estimated 2019-21 biennium	52,503,832	N/A	52,503,832
Estimated 2021-23 biennium	52,503,832	N/A	52,503,832
Estimated 2023-25 biennium	52,503,832	N/A	52,503,832
Total	\$440,111,812 ¹	\$137,977,290 ²	\$578,089,102 ²

¹Payments under Master Settlement Agreement Subsection IX(c)(1) were estimated by reducing the revised Office of Management and Budget projections for this period by the estimated Subsection IX(c)(2) payments.

²Payments under Master Settlement Agreement Subsection IX(c)(2) are a base amount each year, subject to various adjustments. The estimates are based on the actual payment received in April 2008 and assumes that the portion of future payments attributable to this subsection of the Master Settlement Agreement will be the same for the duration of the payment period.

FUNDING EFFECTS OF THE MEASURE

If approved, the initiated measure would result in the following estimated allocation of the tobacco

settlement proceeds for the anticipated remainder of the tobacco settlement payments:

	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	36.8 million	\$13.8 million	10.4 million	10.4 million	2.2 million
Estimated 2009-11 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 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	52.4 million	N/A	23.5 million	23.5 million	5.4 million
Total	\$578.0 million	\$124.2 million	\$204.3 million	\$204.3 million	\$45.2 million

The following schedule compares the percentage allocation of tobacco settlement proceeds based on the current NDCC Section 54-27-25, and NDCC

Section 54-27-25 as amended, if initiated measure No. 3 is approved in the November 2008 general election:

	Tobacco Prevention and Control Trust Fund	Common Schools Trust Fund	Water Development Trust Fund	Community Health Trust Fund
Tobacco settlement proceeds allocated based on the current NDCC Section 54-27-25		45%	45%	10%
Tobacco settlement proceeds allocated based on NDCC Section 54-27-25 as amended by initiated measure No. 3 for the period 2009 through 2017. (estimated)	38%	28%	28%	6%