Tobacco Settlement Revenue Oversight Committee

2011
INTERIM REPORT

New Mexico State Legislature

Legislative Council Service
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CONTENTS

HIGHLIGHTS OF RECOMMENDATIONS

AND

PROPOSED LEGISLATION

SUMMARY

The Tobacco Settlement Revenue Oversight Committee (TSROC) was created in statute as a joint interim legislative committee. The committee monitors the use of revenues received as a result of the Master Settlement Agreement (MSA) signed by the attorneys general of 46 states with the four largest tobacco companies in the United States — Brown & Williamson, Lorillard, Philip Morris and R.J. Reynolds. The agreement was signed on November 23, 1998. The committee meets during the interim "to receive and review evaluations of programs" that receive appropriations of the tobacco revenues. Each year, the committee takes testimony regarding the performance results of programs funded and prepares recommendations for future funding. Those funding recommendations were provided to the Legislative Finance Committee (LFC) on December 8, 2011 by the committee co-chairs.

The interim committee works closely with representatives of the Office of the Attorney General (AGO) to ensure state compliance with the MSA. The AGO is currently in arbitration with tobacco manufacturers over the state's diligent enforcement efforts. If the state is found not to have diligently enforced its tobacco statutes every year since 2003, nearly $350 million in payments already received by New Mexico is at risk. Also, participating manufacturers in the MSA now contend that New Mexico has not had a qualifying statute since 2006, placing at risk up to $240 million of the same payments made under the MSA. Decisions in these matters may not receive even partial resolution until April 2012, raising questions as to the state's potential revenue loss for the current and future fiscal years.

The Tobacco Settlement Permanent Fund (Permanent Fund) consists "of money distributed to the state pursuant to the Master Settlement Agreement entered into between tobacco product manufacturers and various states, including New Mexico". The Tobacco Settlement Program Fund (Program Fund) consists "of distributions made to the fund from the tobacco settlement permanent fund". Each year, 50% of the revenues are retained in the Permanent Fund and the remaining 50% of the revenues are placed in the Program Fund, from which it is appropriated primarily to the Department of Health, the Human Services Department and the University of New Mexico Health Sciences Center.

In 2009, Senate Bill 79 amended the law to provide for an additional 50% distribution to the Program Fund for appropriations in FY 2009 and FY 2010. House Bill 79 (2010) and House Bill 79 (2011) provided for the additional 50% distribution to the Program Fund for FY 2011, FY 2012 and FY 2013. The co-chairs noted in their presentation to the LFC that the 50% distributions originally intended to be retained in the Permanent Fund are being used to cover expenditures for nine of the fiscal years occurring since the funds were created in 1999.

Payments received under the MSA for April 2011 totaled just under $38.56 million, approximately $1.4 million less than projected. As a result, the agencies receiving tobacco settlement program funds had a proportionate share of their FY 2012 appropriations reduced prior to the start of the budget cycle in July 2011.

The FY 2011 ending market value of the Permanent Fund as reported by the State Investment Council was $148.0 million. This is substantially less than the 50% amount ($245 million plus investment income) that would be in the fund if only 50% of the distributions had been appropriated.

A flat revenue projection for FY 2013 is $38.6 million, affording 100% of that amount for distribution to the Program Fund. The committee's recommendations were based on this projection, although the TSROC did not make a recommendation on the second 50% distribution, which historically has been appropriated for Medicaid.

After meeting four times to receive testimony from agencies and programs currently receiving appropriations, the committee adopted funding recommendations for FY 2013. The committee's recommendations for FY 2013 are similar to those in the current year. Due to unrealized revenue, some programs at the University of New Mexico are not receiving tobacco funds in the current fiscal year. The committee is supporting the university's request for a lump sum appropriation with the condition that restrictive language be placed in the general appropriation act requiring that any expenditure of the appropriation be in accordance with the statutory requirements for the program funds.

The TSROC and the Revenue Stabilization and Tax Policy Committee endorsed a bill presented by the AGO, which bill is nearly identical to Senate Bill 397 (2011), which was vetoed by the governor. The bill amends the definition of "units sold" to include both "tax exempt" and "tax-credit" stamps for the purposes of determining escrow payments of cigarette manufacturers that are not participating in the MSA.

The purpose of the bill is to remove ambiguity under current law about which sales are subject to escrow payment and to ensure equalization of treatment of participating and nonparticipating manufacturers. The bill contains a retroactive clause, which was not in Senate Bill 397.

ARTICLE 19

Tobacco Settlement Revenue Oversight Committee

2-19-1. Tobacco settlement revenue oversight committee created; membership; duties.

A. There is created a joint interim legislative committee that shall be known as the "tobacco settlement revenue oversight committee".

B. The tobacco settlement revenue oversight committee shall be composed of six members. Three members of the house of representatives shall be appointed by the speaker of the house of representatives and three members of the senate shall be appointed by the committees' committee of the senate or, if the senate appointments are made in the interim, those members shall be appointed by the president pro tempore of the senate after consultation with and agreement of a majority of the members of the committees' committee. Members shall be appointed from each house so as to give the two major political parties in each house the same proportionate representation on the tobacco settlement revenue oversight committee as prevails in each house.

C. The tobacco settlement revenue oversight committee shall:

(1) monitor the use of tobacco settlement revenue and meet on a regular basis to receive and review evaluations of programs receiving funding from tobacco settlement revenues;

(2) prepare recommendations, based on its program evaluation process, of program funding levels for the next fiscal year. The recommendations shall be made available to the New Mexico legislative council and the legislative finance committee on or before December 15 preceding each session; and

(3) make recommendations as necessary for changes in legislation regarding use of the tobacco settlement revenue.

D. The staff for the tobacco settlement revenue oversight committee shall be provided by the legislative council service.

History: Laws 2000 (2nd S.S.), ch. 9, § 4.

6-4-9. Tobacco settlement permanent fund; investment; distribution.

A. The "tobacco settlement permanent fund" is created in the state treasury. The fund shall consist of money distributed to the state pursuant to the master settlement agreement entered into between tobacco product manufacturers and various states, including New Mexico, and executed November 23, 1998 or any money released to the state from a qualified escrow fund or otherwise paid to the state as authorized by the model statute, Sections 6-4-12 and 6-4-13 NMSA 1978, enacted pursuant to the master settlement agreement. Money in the fund shall be invested by the state investment officer in accordance with the limitations in Article 12, Section 7 of the constitution of New Mexico. Income from investment of the fund shall be credited to the fund. Money in the fund shall not be expended for any purpose, except as provided in this section.

B. In fiscal years 2003 through 2006, a distribution shall be made from the tobacco settlement permanent fund to the general fund in an amount equal to one hundred percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year.

C. In fiscal year 2007 and in each fiscal year thereafter, an annual distribution shall be made from the tobacco settlement permanent fund to the tobacco settlement program fund of an amount equal to fifty percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year until that amount is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the tobacco settlement permanent fund for the immediately preceding five calendar years. Thereafter, the amount of the annual distribution shall be four and seven-tenths percent of the average of the year-end market values of the tobacco settlement permanent fund for the immediately preceding five calendar years. In the event that the actual amount distributed to the tobacco settlement program fund in a fiscal year is insufficient to meet appropriations from that fund for that fiscal year, the secretary of finance and administration shall proportionately reduce each appropriation accordingly.

D. In addition to the distribution made pursuant to Subsection C of this section, in fiscal year 2009, fiscal year 2010 and fiscal year 2011, the remaining fifty percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year shall be distributed from the tobacco settlement permanent fund to the tobacco settlement program fund.

E. The tobacco settlement permanent fund shall be considered a reserve fund of the state and, as a reserve fund, may be expended in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, in order to avoid an unconstitutional deficit, the legislature may authorize a transfer from the tobacco settlement permanent fund to the general fund but only in an amount necessary to meet general fund appropriations.

History: Laws 1999, ch. 207, § 1; 2000 (2nd S.S.), ch. 9, § 1; 2003, ch. 312, § 1; 2009, ch. 3, § 5; 2010, ch. 49, § 1; 2011, ch. 3, § 1; 2011, ch. 167, § 1.

2011 amendments. — Laws 2011, ch. 3, § 1 and Laws 2011, ch. 167, § 1 both enacted amendments to this section. The section was set out as amended by Laws 2011, ch. 167, § 1. See 12-1-8 NMSA 1978.

Laws 2011, ch. 167, § 1, effective July 1, 2011, in Subsection A, required that money in the fund to be invested in accordance with Article 12, Section 7 of the New Mexico constitution rather than as land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978.

Laws 2011, ch. 3, § 1, effective June 17, 2011, in Subsection A, eliminated the reference to the model statute; and in Subsection D, provided for additional distributions in fiscal years 2012 and 2013 from the tobacco settlement permanent fund to the tobacco settlement program fund, as set out below:

"6-4-9. Tobacco settlement permanent fund; investment; distribution.

A. The "tobacco settlement permanent fund" is created in the state treasury. The fund shall consist of money distributed to the state pursuant to the master settlement agreement, entered into between tobacco product manufacturers and various states, including New Mexico, and executed November 23, 1998, or any money released to the state from a qualified escrow fund or otherwise paid to the state as authorized by Sections 6-4-12 and 6-4-13 NMSA 1978, enacted pursuant to the master settlement agreement. Money in the fund shall be invested by the state investment officer as land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Income from investment of the fund shall be credited to the fund. Money in the fund shall not be expended for any purpose, except as provided in this section.

B. In fiscal years 2003 through 2006, a distribution shall be made from the tobacco settlement permanent fund to the general fund in an amount equal to one hundred percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year.

C. In fiscal year 2007 and in each fiscal year thereafter, an annual distribution shall be made from the tobacco settlement permanent fund to the tobacco settlement program fund of an amount equal to fifty percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year until that amount is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the tobacco settlement permanent fund for the immediately preceding five calendar years. Thereafter, the amount of the annual distribution shall be four and seven-tenths percent of the average of the year-end market values of the tobacco settlement permanent fund for the immediately preceding five calendar years. In the event that the actual amount distributed to the tobacco settlement program fund in a fiscal year is insufficient to meet appropriations from that fund for that fiscal year, the secretary of finance and administration shall proportionately reduce each appropriation accordingly.

D. In addition to the distribution made pursuant to Subsection C of this section, in fiscal years 2009 through 2013, the remaining fifty percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year shall be distributed from the tobacco settlement permanent fund to the tobacco settlement program fund.

E. The tobacco settlement permanent fund shall be considered a reserve fund of the state and, as a reserve fund, may be expended in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, in order to avoid an unconstitutional deficit, the legislature may authorize a transfer from the tobacco settlement permanent fund to the general fund but only in an amount necessary to meet general fund appropriations."

The 2010 amendment, effective May 19, 2010, in Subsection D, after "fiscal year 2009", deleted "and in" and after "fiscal year 2010", added "and fiscal year 2011".

The 2009 amendment, effective February 6, 2009, added Subsection D.

The 2003 amendment, effective June 20, 2003, substituted "except as provided in this section" for "but an annual distribution shall be made to the tobacco settlement program fund in accordance with Subsection B of this section" at the end of Subsection A; deleted "On July 1 of fiscal year 2001 and on July 1 of" at the beginning of former Subsection B; added present Subsection B; added the Subsection C designation and in present Subsection C, added "In fiscal year 2007 and in" at the beginning, substituted "that" for "the immediately preceding" following "permanent fund in", added the last sentence; and added Subsection D.

The 2000 amendment, effective April 12, 2000, inserted "distribution" in the section heading; in Subsection A, inserted "any money released to the state", substituted "or otherwise paid the state as authorized by the model statute, Sections 6-4-12 and 6-4-13 NMSA 1978" for "authorized by a qualifying state statute", inserted "Income from investment of the fund shall be credited to the fund", and rewrote the last sentence; and added Subsection B.

6-4-10. Tobacco settlement program fund created; purpose.

A. The "tobacco settlement program fund" is created in the state treasury and shall consist of distributions made to the fund from the tobacco settlement permanent fund. Income from investment of the tobacco settlement program fund shall be credited to the fund. Beginning in fiscal year 2002, money in the tobacco settlement program fund may be appropriated by the legislature for any of the purposes specified in Subsection B of this section and after receiving the recommendations of the tobacco settlement revenue oversight committee. Balances in the tobacco settlement program fund at the end of any fiscal year shall remain in the fund.

B. Money may be appropriated from the tobacco settlement program fund for health and educational purposes, including:

(1) support of additional public school programs, including extracurricular and after-school programs designed to involve students in athletic, academic, musical, cultural, civic, mentoring and similar types of activities;

(2) any health or health care program or service for prevention or treatment of disease or illness;

(3) basic and applied research conducted by higher educational institutions or state agencies addressing the impact of smoking or other behavior on health and disease;

(4) public health programs and needs; and

(5) tobacco use cessation and prevention programs, including statewide public information, education and media campaigns.

History: Laws 1999, ch. 207, § 2; 2000 (2nd S.S.), ch. 9, § 2.

Contingent effective dates. — Laws 2009, ch. 3, § 13, effective February 6, 2009, provided that Laws 2009, ch. 3, § 9 was contingent upon the enactment of legislation of the first session of the forty-ninth legislature that reduced general fund appropriations in the General Appropriation Act of 2008.

Laws 2009, ch. 2, § 1, effective February 6, 2009, reduced general fund appropriations in the General Appropriation Act of 2008.

Repeals. — Laws 2009, ch. 3, § 12, effective February 6, 2009, repealed Laws 2008, ch. 50, § 1 relating to tobacco settlement program fund appropriations.

The 2000 amendment, effective April 12, 2000, changed the "tobacco settlement income fund" to be the "tobacco settlement program fund" in the section heading and in the beginning of Subsections A and B; in Subsection A, substituted "distributions" for "appropriations", added the second sentence, inserted "Beginning in fiscal year 2002" and "and after receiving the recommendations of the tobacco settlement revenue oversight committee" in the third sentence and added the fourth sentence; and inserted "statewide" in Subsection B(5).

6-4-11. Tobacco settlement distributions to state; transfer to tobacco settlement permanent fund.

The state treasurer shall deposit in the tobacco settlement permanent fund all amounts distributed to the state pursuant to the master settlement agreement entered into between tobacco product manufacturers and various states, including New Mexico, and executed November 23, 1998 or any money released to the state from a qualified escrow fund or otherwise paid to the state as authorized under the model state statute, Sections 6-4-12 and 6-4-13 NMSA 1978, enacted pursuant to the master settlement agreement.

History: Laws 1999, ch. 207, § 3; 2000 (2nd S.S.), ch. 9, § 3.

The 2000 amendment, effective April 12, 2000, inserted "any money released to the state" preceding "1998" and substituted "or otherwise paid to the state as authorized under the model state statute, Sections 6-4-12 and 6-4-13 NMSA 1978" for "authorized by a qualifying state statute".

TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE (TSROC)
FY 2012 AND 2013 RECOMMENDATIONS
(thousands of dollars)

AGENCY AND PROGRAM	2012 TSROC Recs	2012 Revised OpBud	2013 TSROC Recs	2013 Proposed Change
Department of Health				
Tobacco cessation and prevention programs	6,695.3	5,682.0	5,682.0	
Diabetes prevention and control program	881.4	748.0	748.0	
HIV/AIDS services	345.2	293.0	293.0	
Breast & cervical cancer *screening* program	146.9	128.6	128.6	
Total Department of Health	**$8,068.8**	**6,851.6**	**6,851.6**	**0**
Human Services Department				
Breast & cervical cancer *treatment* program	1,500.0	1,312.4	1,312.4	
Medicaid expansion	5,175.4	7,736.1	7,907.3	
Total Human Services Department	**$6,675.4**	**9,048.5**	**9,219.7**	**see notes**
University of New Mexico				
Innovations in preventing and treating tobacco-related diseases				
Research in genomics, biocomputing & envir. health	1,215.0	979.8	see notes	
Subtotal UNM tobacco-related diseases	$1,215.0	979.8	TBD	
Other programs				
Area health education center	45.0			
Center for telehealth (formerly telemedicine)	135.0			
Los Pasos program	45.0			
Pediatric oncology	360.0	261.4		
Poison & information center	405.0	395.2		
Specialty education in pediatrics	360.0	261.4		
Specialty education in trauma	360.0	261.4	see notes	
Subtotal UNM other programs	$1,710.0	1,179.4	TBD	
Contracts and I&G				
Lung & tobacco-related disease research (LRRI contract)	1,000.0	195.0		
Funding retained by UNM (Instruction & General)	837.0	607.9	see notes	
Subtotal UNM/LRRI/I&G	1,837.0	802.9	TBD	
Total University of New Mexico	**$4,762.0**	**2,962.1**	**2,962.1**	**see notes**
Indian Affairs Department				
Tobacco cessation and prevention programs	293.8	249.3	249.3	
Total Indian Affairs Department	**$293.8**	**249.3**	**249.3**	
GRAND TOTAL - Programs	**$19,800.0**	**19,111.5**	**19,282.7**	

Allocations for FY 2012 appropriations were reduced as a result of revised tobacco settlement actual revenues. The amount paid to Medicaid was incorrectly reduced and added to the 50% of revenue diverted to additional Medicaid rather than to the Tobacco Settlement Permanent Fund. The FY 2013 recommendation corrects that error.

Appropriations to UNM are recommended as a lump sum with language to be inserted into the General Appropriation Act stating that the funds shall be expended in accordance with Section 6-4-10 NMSA 1978 for health and educational purposes.

TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE
<u>FISCAL YEAR 2013 RECOMMENDATIONS</u>
(Dollars in thousands unless otherwise noted)

Introductory Note:

The FY 2011 ending market value of the Tobacco Settlement Permanent Fund as reported by the State Investment Council was approximately $150.0 million. Approximately $38.6 million in revenue is projected for FY 2013, affording 50 percent of that amount, or $19.3 million, for distribution to the Tobacco Settlement Program Fund. The committee's recommendations were based on this projection, which is similar to the budgeted FY 2012 amount.

The committee recommends that in FY 2013, funding levels for the programs generally be continued at the FY 2012 funding levels, which were reduced below appropriations as a result of reduced tobacco settlement payments in April 2011.

The funding for UNM is recommended in a lump sum with language mandating that expenditures be made in accordance with Section 6-4-10 NMSA 1978 for health and educational programs.

The committee recognizes the difficult budgetary situation currently facing the state, but at the same time it recognizes the important work being performed by the programs receiving tobacco settlement funds. Short-changing such programs can have significant impacts on the state, both in the long term and short term. Programs receiving tobacco settlement money are often able to leverage many more federal and private foundation dollars, thereby creating more jobs and improving the local economy. The appropriations are also used to help curtail tobacco use, saving the state millions of dollars in tobacco-related health care costs.

1. CONTINUE FUNDING FOR THE TOBACCO USE PREVENTION AND CONTROL PROGRAM (TUPAC), DEPARTMENT OF HEALTH (DOH)

Adjusted FY 2012 Funding — $5,682.0
FY 2013 Recommended Funding — $5,682.0

The committee recommends continuing to build a comprehensive tobacco cessation and prevention program that will eventually reduce the number of tobacco users, thereby reducing tobacco-related disease, treatment and the escalating costs for associated health care.

TUPAC contracts statewide to implement the four goals of the program: preventing initiation of tobacco use, helping youth and adults quit using tobacco, eliminating exposure to secondhand smoke and identifying and eliminating tobacco-related disparities among various communities. Contractors under this program fall into several categories:

A. Community Programs

Local community programs reduce tobacco use through changes in the social environment and through community partnerships. The programs combine prevention, education and cessation efforts to mobilize communities to prevent tobacco use, provide local cessation services and eliminate exposure to secondhand smoke. In addition to community health planning, the programs recruit youth into tobacco use prevention coalitions, train youth as advocates and peer educators, provide media literacy and merchant education and provide local cessation services.

B. Cessation Programs

These programs focus on increasing the access and availability of counseling and treatment to stop smoking. All cessation services are based upon proven intervention models. The programs include cessation interventions in schools, communities and health facilities; training for health care providers; training for cessation group facilitators; provision of stop smoking medications; and media messages on quitting. Tobacco cessation services are also offered through 1-800 QUIT NOW, a free tobacco cessation help line offering phone counseling, personalized quit plans and free nicotine replacement therapy (gum, patches and lozenges) to registered callers.

C. School-Based Youth and Parent Programs

These funds are awarded to school districts or allied organizations that provide programs ranging from age-specific classroom curricula to teacher training, special school projects, media literacy training, peer education programs and cessation programs for staff, parents and students. The programs are intended to prevent youth initiation of tobacco use, educate youth about the dangers of tobacco use, teach life skills and refusal skills and provide cessation opportunities for youth who already use tobacco.

D. Media Campaigns

These funds are awarded to provide public awareness and education campaigns that send and reinforce powerful tobacco-free messages to promote cessation and prevent tobacco use and educate about risks associated with secondhand smoke. Activities include tobacco prevention media campaigns for TV, radio, internet, billboard and print media; youth-led tobacco prevention media activities; anti-tobacco banners and billboards; media literacy training; and promotion of 1-800 QUIT NOW, the free tobacco cessation help line.

E. Partnerships with Populations Experiencing Tobacco-Related Disparities

These funds are awarded to assist various communities that are disproportionately affected by tobacco use, including people with disabilities, Native Americans, Hispanics, rural populations and low-income individuals. Partnerships with groups experiencing tobacco-related disparities are aimed at providing effective prevention activities, providing culturally relevant and accessible cessation services and reducing tobacco use. Activities include ensuring that services and messages are effectively reaching groups experiencing disparities; partnering with groups in message and service design and delivery; and organizing and implementing forums to educate and inform.

F. Surveillance and Evaluation

These funds are used to monitor the behaviors, attitudes and outcomes related to tobacco use and to track the progress of program elements and performance indicators. Efforts include developing a common reporting format for all TUPAC programs, providing evaluation training, conducting youth and adult tobacco use surveys and identifying, collecting and analyzing evaluation information and data.

2. CONTINUE FUNDING THE DIABETES PREVENTION AND CONTROL PROGRAM, DOH

Adjusted FY 2012 Funding — $748.0
FY 2013 Recommended Funding — $748.0

These funds provide for public education and media exposure on diabetes and provide support for rural clinics, including supplies, equipment and lab tests. They also provide for diabetes self-management education as well as activity and nutrition programs in elementary schools.

3. CONTINUE FUNDING HIV/AIDS SERVICES, DOH

Adjusted FY 2012 Funding — $293.0
FY 2013 Recommended Funding — $293.0

These funds provide chronic-care AIDS treatment services that help people with AIDS to lead longer, fuller and more productive lives. The care includes practical, psychosocial and clinical services. The funds are also used to contract with community-based organizations to implement statewide HIV prevention and education programs.

4. CONTINUE FUNDING FOR THE BREAST AND CERVICAL CANCER SCREENING PROGRAM, DOH

Adjusted FY 2012 Funding — $128.6
FY 2013 Recommended Funding — $128.6

The purpose of these funds is to provide breast and cervical cancer *screening* for eligible low-income women statewide. The DOH has an extensive outreach program that includes advertising the program through billboards, flyers, bus signs, radio, newspapers and large community activities.

5. CONTINUE FUNDING FOR THE BREAST AND CERVICAL CANCER TREATMENT PROGRAM, HUMAN SERVICES DEPARTMENT (HSD)

Adjusted FY 2012 Funding — $1,312.4
FY 2013 Recommended Funding — $1,312.4

The purpose of these funds is to provide *treatment* for women diagnosed with breast or cervical cancer who are eligible for Medicaid under the breast and cervical cancer category of eligibility. New Mexico receives an enhanced federal match (nearly 4:1) for this program. Women in the program receive full Medicaid coverage through the fee-for-service program.

6. CONTINUE MEDICAID FUNDING, HSD

Adjusted FY 2012 Funding — $7,736.1
FY 2013 Recommended Funding — $7,907.3

The purpose of these funds is to provide Medicaid to eligible persons in New Mexico.

7. CONTINUE FUNDING FOR RESEARCH IN GENOMICS, BIOCOMPUTING AND ENVIRONMENTAL HEALTH, UNIVERSITY OF NEW MEXICO HEALTH SCIENCES CENTER (UNMHSC)

NOTE: The total recommended funding for UNM programs is $2,962.1 as a lump sum with language to be inserted into the General Appropriation Act stating that the funds shall be expended in accordance with Section 6-4-10 NMSA 1978 for health and educational purposes.

Adjusted FY 2012 Funding — $979.8
FY 2013 Recommended Funding — To be determined based on lump-sum funding to UNM

These funds would be used by the UNMHSC to conduct cutting-edge research on lung and tobacco-related illnesses, to translate research findings into effective clinical care programs, to disseminate scholarly work and to recruit and hire scientists and support personnel.

8. CONTINUE FUNDING FOR OTHER PROGRAMS ADMINISTERED BY UNM

Total Adjusted FY 2012 Funding — $1,179.4
Total FY 2013 Recommended Funding — To be determined for each program based on lump-sum funding to UNM

A. Area Health Education Centers — Not funded with tobacco revenue in FY 2012

The purpose of these funds is to increase the number of health care professionals practicing in rural and underserved areas and to expand clinical training in those areas for medical, nursing, public health, pharmacy, physician assistant and allied health students, as well as for primary care physicians. Additionally, the funds are intended to increase the health profession applicant pool from underrepresented ethnic minorities and from shortage areas. Finally, the funds would support and provide continuing education programs in order to retain health professionals in the underserved areas.

B. Center for Telehealth — Not funded with tobacco revenue in FY 2012

The purpose of these funds is to improve the quality of and access to health care systems in rural New Mexico by using advanced technology to extend the resources of the UNMHSC to remote areas of the state. The funds are used to increase the number of clinical services, educational programs and administrative activities delivered to remote sites. Funds are used for physician salaries, supplies and travel. The center collaborates with the federal government and the University of Hawaii.

C. Los Pasos Program — Not funded with tobacco revenue in FY 2012

The purpose of these funds is to support salaries of doctors who provide comprehensive health services to families and to children up to age three who have been exposed in utero to alcohol and other drugs. The goals include the prevention of negative consequences of parental use of alcohol, tobacco and other drugs, as well as training support and technical assistance to agencies and community programs in northern and central New Mexico.

D. Pediatric Oncology — Funding to be determined

The purpose of these funds is to support salaries of doctors who provide statewide quality care, treatment, monitoring and support for children and families facing childhood cancer. The program has initiated a three-year pediatric oncology curriculum for residents, and it advances the treatment of childhood cancer through the pursuit of clinical and basic research at local and national levels.

E. Poison and Drug Information Center — Funding to be determined

The purpose of these funds is to reduce the morbidity and mortality associated with poisoning and to encourage proper use of medications. The center provides a statewide poison prevention program, educates the public, offers first-aid information, distributes materials and provides treatment information to health professionals. The funds support 24-hour statewide expert assistance for poisoning emergencies. The center has an active research program, provides education and training to health care professionals and collaborates with local, state and federal agencies.

F. Specialty Education in Pediatrics — Funding to be determined

The purpose of these funds is to pay the salaries of physicians serving on the pediatrics faculty at the UNM School of Medicine. Faculty members treat children as well as educate medical students, residents and community providers. They conduct research to advance pediatric health care across the state. The funds will also be used for related materials, services and travel to assist the educational program.

G. Specialty Education in Trauma — Funding to be determined

The purpose of these funds is to pay the salaries of physicians serving on the UNM School of Medicine faculty. Faculty members educate medical students in trauma, critical care and emergency care and staff the Level I Trauma Center at the UNM hospital emergency room.

9. CONTINUE FUNDING FOR EMPHYSEMA AND LUNG CANCER RESEARCH

Adjusted FY 2012 Funding — $195.0
FY 2013 Recommended Funding — Funding to be determined

These funds would continue UNM's contract with Lovelace Respiratory Research Institute for its research in emphysema and lung cancer detection and treatment. Lovelace is presently in the process of developing over 130 new drugs from commercial sources, many of which are directed at mitigating the health effects of tobacco products. The work built on the back of the Lovelace program brings a leveraged figure of over 15 to 1 in revenue to the state.

10. CONTINUE FUNDING FOR INSTRUCTION AND GENERAL PURPOSES, UNMHSC

Adjusted FY 2012 Funding — $607.9
FY 2013 Recommended Funding — Funding to be determined

The purpose of these funds is to pay for salaries at UNMHSC, which provides quality clinical services and trains doctors in New Mexico.

11. CONTINUE FUNDING TOBACCO CESSATION AND PREVENTION PROGRAMS, INDIAN AFFAIRS DEPARTMENT

Adjusted FY 2012 Funding — $249.3
FY 2013 Recommended Funding — $249.3

The program promotes cessation and prevention of commercial tobacco abuse in Native American communities, with special emphasis on Native American youth, and promotes cultural awareness of the Native American traditional and ceremonial use of tobacco as a means to strengthen cultural identity and resistance to commercial tobacco. Mini-grants are awarded to the tribes and additional contracts are awarded for development of tobacco cessation programs targeting Native American communities. Some funding has been used for a tobacco cessation and prevention youth forum.

LEGISLATION ENDORSED BY THE COMMITTEE

The committee endorsed one bill in 2011.

BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

DISCUSSION DRAFT

ENDORSED BY THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO TOBACCO SALES; CLARIFYING THAT CIGARETTE PACKS STAMPED WITH TAX-CREDIT STAMPS ARE "UNITS SOLD" FOR THE PURPOSE OF DETERMINING ESCROW PAYMENTS DUE PURSUANT TO THE MASTER SETTLEMENT AGREEMENT; AMENDING THE CIGARETTE TAX ACT; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 6-4-12 NMSA 1978 (being Laws 1999, Chapter 208, Section 1, as amended) is amended to read:

"6-4-12. DEFINITIONS.--As used in Sections 6-4-12 [~~and 6-4-13~~] through 6-4-13.2 NMSA 1978:

A. "adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement;

B. "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns", "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons;

C. "allocable share" means "Allocable Share" as that term is defined in the Master Settlement Agreement;

D. "cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use and consists of or contains:

(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(2) tobacco, in any form, that is functional in the product [~~which~~] and that, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(3) any roll of tobacco wrapped in any substance containing tobacco [~~which~~] that, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in Paragraph

(1) of this subsection. The term "cigarette" includes "roll-your-own" (i.e., any tobacco [~~which~~] that, because of its appearance, type, packaging or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette", 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette";

E. "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the state and leading United States tobacco product manufacturers;

F. "qualified escrow fund" means an escrow arrangement with a federally chartered or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars ($1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with Subsection B of Section 6-4-13 NMSA 1978;

G. "released claims" means "Released Claims" as that term is defined in the Master Settlement Agreement;

H. "releasing parties" means "Releasing Parties" as that term is defined in the Master Settlement Agreement;

I. "tobacco product manufacturer" means an entity that, after the date of enactment of this act, directly (and not exclusively through any affiliate):

(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of Subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in Subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) becomes a successor of an entity described in Paragraph (1) or (2) of this subsection.

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within Paragraph (1), (2) or (3) of this subsection; and

J. "units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer or similar intermediary or intermediaries, during the year in question, as measured by [~~excise taxes collected, ounces of "roll-your-own" tobacco sold and sales of products bearing tax-exempt stamps on packs or "roll-your-own" tobacco containers. The secretary of taxation and revenue shall promulgate such rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year~~]:

(1) the excise tax due from cigarettes sold bearing tax stamps pursuant to the Cigarette Tax Act;

(2) ounces of "roll-your-own" tobacco sold on which the tobacco products tax is due pursuant to the Tobacco Products Tax Act; or

(3) cigarettes sold bearing tax-exempt or tax-credit stamps pursuant to the Cigarette Tax Act."

SECTION 2. A new Section 6-4-13.2 NMSA 1978 is enacted to read:

"6-4-13.2. [NEW MATERIAL] RULES--AMOUNT OF STATE EXCISE TAX PAID ON CIGARETTES OF TOBACCO PRODUCT MANUFACTURER.--The secretary of taxation and revenue shall adopt rules regarding how to determine for each year:

underscored material = new
[~~bracketed material~~] = delete

A. the amount of state excise tax paid on the cigarettes of a tobacco product manufacturer and on the number of ounces of "roll-your-own" tobacco sold; and

B. the number of cigarettes bearing tax-exempt or tax-credit stamps that are sold."

SECTION 3. Section 7-12-5 NMSA 1978 (being Laws 1971, Chapter 77, Section 5, as amended) is amended to read:

"7-12-5. AFFIXING STAMPS.--

A. Except as provided in Section 7-12-6 NMSA 1978, all cigarettes shall be placed in packages or containers to which a stamp shall be affixed. Only a distributor with a valid license issued pursuant to the Cigarette Tax Act may purchase or obtain unaffixed tax-exempt stamps, tax-credit stamps or tax stamps. A distributor shall not sell or provide unaffixed stamps to another distributor, manufacturer, export warehouse proprietor or importer with a valid permit pursuant to 26 U.S.C. 5713 or any other person.

B. Stamps shall be affixed by the distributor to each package of cigarettes to be sold or distributed in New Mexico within thirty days of receipt of those packages.

C. A distributor shall apply stamps only to packages of cigarettes that the distributor has received directly from another distributor or from a manufacturer or importer of cigarettes that possesses a valid and current permit pursuant to 26 U.S.C. 5713.

D. A distributor shall not affix a tax stamp, a tax-exempt stamp or a tax-credit stamp to a package of cigarettes of a manufacturer or a brand family that is not included in the directory or sell, offer or possess for sale cigarettes of a manufacturer or brand family that is not included in the directory.

E. Packages shall contain cigarettes in lots of five, ten, twenty or twenty-five.

F. Unless the requirements of this section are waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall be affixed to each package of cigarettes subject to the cigarette tax, a tax-credit stamp shall be affixed to each package of cigarettes subject to a qualifying tribal cigarette tax and a tax-exempt stamp shall be affixed to each package of cigarettes not subject to the cigarette tax pursuant to Section 7-12-4 NMSA 1978.

[~~G. A tax-exempt stamp or tax-credit stamp is not an excise tax stamp for purposes of determining units sold pursuant to Section 6-4-12 NMSA 1978.~~

~~H.~~] G. Stamps shall be affixed inside the boundaries of New Mexico, unless the department has granted a license allowing a person to affix stamps outside New Mexico."

SECTION 4. APPLICABILITY.--The provisions of this act shall apply to units sold on or after January 1, 2010 pursuant to Section 6-4-13 NMSA 1978.

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underscored material = new
[~~bracketed material~~] = delete

SECTION 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

2011 INTERIM WORK PLAN

2011 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

The Tobacco Settlement Revenue Oversight Committee was created pursuant to Section 2-19-1 NMSA 1978. The committee members are:

Members

Rep. Gail Chasey, Co-Chair	Rep. Jim Hall
Sen. Mary Jane M. Garcia, Co-Chair	Rep. Danice Picraux
Sen. Dede Feldman	Sen. John C. Ryan

Advisory Members

Sen. Sue Wilson Beffort	Sen. Linda M. Lopez
Rep. Ray Begaye	Sen. Mary Kay Papen

Work Plan

The Tobacco Settlement Revenue Oversight Committee will continue its oversight duties for the programs that receive funding through the Tobacco Settlement Program Fund. The committee will receive testimony regarding the balances in and projected revenues for both the Tobacco Settlement Program Fund and the Tobacco Settlement Permanent Fund.

During the 2011 interim, the Tobacco Settlement Revenue Oversight Committee proposes to:

(1) monitor the status of the revenue and reserves for the Tobacco Settlement Permanent Fund and the use of the Tobacco Settlement Program Fund through committee oversight and evaluation of those programs recommended by the committee and funded by the legislature; review the enforcement requirements under the Master Settlement Agreement; and compare recommended funding levels by the Centers for Disease Control and Prevention with those funded in New Mexico;

(2) meet, hear testimony regarding tobacco settlement-related issues and legislation and prepare recommendations of program funding levels for fiscal year 2012, based on the committee's program evaluation process; and

(3) make recommendations as necessary for changes in legislation relating to and regarding use of the tobacco settlement revenue.

2011 Approved Meeting Schedule

Date	Location
June 23	Santa Fe
July 13	Santa Fe
August 16	Santa Fe
October 31	Santa Fe

COMMITTEE AGENDAS

TENTATIVE AGENDA
for the
FIRST MEETING IN 2011
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

June 23, 2011
Room 311, State Capitol
Santa Fe

Thursday, June 23

10:00 a.m. **Call to Order**

2011 Committee-Related Legislation and Fiscal Year 2012 Funding Levels
—Alise Rudio, Staff Attorney, Legislative Council Service (LCS)

Tobacco Master Settlement Agreement and Litigation Update
—Nan Erdman, Assistant Attorney General, Office of the Attorney General
—Claudia Ravanelli, Special Projects Coordinator, Office of the Attorney General

Review, Discussion and Adoption of Interim Work Plan and Meeting Schedule

Public Comment

Adjournment

Revised: July 12, 2011

TENTATIVE AGENDA
for the
SECOND MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

July 13, 2011
Room 311, State Capitol
Santa Fe

<u>Wednesday, July 13</u>

10:00 a.m. **Call to Order**

Tobacco Control Overview; Tobacco Control Progress in New Mexico
—Sandra Adondakis, New Mexico Government Relations Director, American Cancer Society Cancer Action Network

11:15 a.m. **Tobacco Master Settlement Agreement and Litigation Update (Continued)**
—Nan Erdman, Assistant Attorney General, Office of the Attorney General

12:00 noon **Lunch**

1:30 p.m. **Tobacco Settlement Permanent Fund Performance and Balances**
—Vince Smith, Deputy State Investment Officer, State Investment Council (SIC)
—Charles Wollmann, Director of Communications, SIC

2:00 p.m. **Tobacco Use Prevention and Control Program Report from Indian Affairs Department (IAD)**
—Arthur P. Allison, Secretary-Designate, IAD, (Canceled July 12 by Agency)

3:00 p.m. **Public Comment**

3:15 p.m. **Adjourn**

Revised: August 12, 2011

TENTATIVE AGENDA
for the
THIRD MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

August 16, 2011
Room 311, State Capitol
Santa Fe

<u>Tuesday, August 16</u>

10:00 a.m. **Call to Order**

Department of Health (DOH) Report; Tobacco Use Prevention and Control (TUPAC) Program Report; Epidemiological Data on Smoking; HIV/AIDS Program Report; Diabetes Program Report; Breast and Cervical Cancer Program Report
—Dr. Catherine D. Torres, Secretary, DOH

12:00 noon **Lunch**

1:00 p.m. **Breast and Cervical Cancer Program Report — Human Services Department (HSD)**
—Anne Foster-Rosales, Medical Director, HSD
—Virginia Alcon, Staff Manager, Medical Assistance Division, HSD

1:30 p.m. **University of New Mexico (UNM) Health Sciences Center Report**
—Richard S. Larson, M.D., Ph.D., Vice Chancellor for Research; Senior Associate Dean for Research, UNM

2:30 p.m. **Lovelace Respiratory Research Institute (LRRI) Report**
—Robert W. Rubin, Ph.D., President and Chief Executive Officer, LRRI

3:00 p.m. **TUPAC — Indian Affairs Department (IAD) Program Report**
—Arthur P. Allison, Secretary-Designate, IAD

3:45 p.m. **Proposed Legislation; Preliminary Discussion**

4:15 p.m. **Public Comment**

Adjourn

Revised: October 26, 2011

TENTATIVE AGENDA
for the
FOURTH MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

October 31, 2011
Room 311, State Capitol
Santa Fe

Monday, October 31

10:00 a.m. **Call to Order (The Committee May Work Through Lunch)**

Proposed Legislation for 2012 Legislative Session; Arbitration Update
—Nan Erdman, Assistant Attorney General, Office of the Attorney General

11:00 a.m. **Tobacco Settlement Permanent and Program Funds; Revenue Projections**
—Elisa Walker-Moran, Chief Economist, Legislative Finance Committee

Approval of Third Meeting Minutes

Public Comment

Review of FY11 and FY12 Program Funding Levels and FY13 Funding Recommendations

Adjourn

COMMITTEE MINUTES

MINUTES
of the
FIRST MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

June 23, 2011
Room 311, State Capitol
Santa Fe

The first meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Gail Chasey, co-chair, on June 23, 2011 at 10:20 a.m. in Room 311 of the State Capitol in Santa Fe. The co-chair announced that the meeting was being webcast.

Present	**Absent**
Rep. Gail Chasey, Co-Chair	Sen. John C. Ryan
Sen. Mary Jane M. Garcia, Co-Chair	
Sen. Dede Feldman	
Rep. Jim W. Hall	
Rep. Danice Picraux	
Advisory Members	
Sen. Sue Wilson Beffort	Rep. Ray Begaye
Sen. Linda M. Lopez	
Sen. Mary Kay Papen	

Staff
Alise Rudio
Roxanne Knight
Zelda Abeita

Guests
The guest list is in the meeting file.

Handouts
Handouts are in the meeting file.

<u>Thursday, June 23</u>

Introductions
By suggestion of Representative Chasey, members of the committee, staff and audience introduced themselves.

Interim Committee Protocols

Doris Faust, assistant director for drafting services, Legislative Council Service (LCS), briefed the committee on interim committee protocols and said that, due to budget constraints, the New Mexico Legislative Council requested interim committees to keep the number of meetings the same as in 2010.

2011 Committee-Related Legislation and Fiscal Year 2011 Funding Levels

Ms. Rudio, staff attorney, LCS, provided a summary of legislation enacted since the committee last met in 2010. During the regular session, the legislature enacted House Bill 79 (Laws 2011, Chapter 3), which provides that, for fiscal years 2012 and 2013, 100 percent of the tobacco settlement payments into the Tobacco Settlement Permanent Fund be distributed to the Tobacco Settlement Program Fund for appropriations to state agencies and higher education institutions. Normally, only 50 percent of the payments are distributed to the program fund, with the remaining 50 percent going into the permanent fund. This will be the fourth fiscal year in a row that payments will be diverted from the permanent fund. The additional 50 percent (estimated at $19.8 million) was appropriated to the Human Services Department (HSD) for Medicaid programs in the General Appropriation Act of 2011.

The legislature also enacted House Bill 52 (Laws 2011, Chapter 167), which changes the standard for investment for the Tobacco Settlement Permanent Fund to that "in accordance with limitations in Article 12, Section 7 of the constitution of New Mexico". This change requires that the permanent fund be invested with the same statutory limitations that currently exist on the investment of the land grant permanent funds under the Uniform Prudent Investor Act, but it does not require the Tobacco Settlement Permanent Fund to be invested in a mirror image of the land grant permanent funds. The change in investment standards may result in more conservative investments because certain types of long-term investments, such as private equity, hedge funds or real estate, may not be prudent for the Tobacco Settlement Permanent Fund, which is a reserve fund and is smaller than the land grant permanent funds.

Ms. Rudio told the committee that the appropriations made in the General Appropriation Act of 2011 for fiscal year 2012 from the Tobacco Settlement Program Fund would be presented later in a spreadsheet. The General Appropriation Act of 2011 also includes an appropriation of $300,000 to the legal services program of the attorney general for tobacco litigation and arbitration costs. In addition, the act authorizes the legal services program of the attorney general to request budget increases up to $150,000 for discovery costs for tobacco arbitration, provided that the revenue expended shall be solely from settlements that authorize consumer issues. This money does not come out of the Tobacco Settlement Program Fund.

In addition, Ms. Rudio informed the committee that the General Appropriation Act of 2011 contains language that authorizes a transfer of up to $30 million during fiscal year 2012 from the Tobacco Settlement Permanent Fund to the benefit account of the Unemployment Compensation Fund, which is contingent upon certification by the secretary of workforce solutions that there will be insufficient amounts to pay benefits and that the loan can be repaid by June 30, 2012. The transfer is also contingent on review by the Legislative Finance Committee (LFC) and approval by the State Board of Finance.

Ms. Rudio also discussed Senate Bill 397, which was vetoed by the governor. Senate Bill 397 proposed to amend the definition of "units sold" to include both "tax-exempt" and "tax-credit" stamps for the purposes of determining escrow payments of cigarette manufacturers that are not participating in the Master Settlement Agreement (MSA). The purpose of the bill was to remove ambiguity under current law about which sales are subject to escrow payment and to equalize treatment of participating and nonparticipating manufacturers. Ms. Rudio told the committee that Nan Erdman from the Attorney General's Office (AGO) would be discussing the vetoed bill during her presentation.

Ms. Rudio and Ms. Knight, researcher, LCS, provided the committee with a spreadsheet showing the appropriations made for fiscal year 2012 from the Tobacco Settlement Program Fund. All of the appropriations in fiscal year 2012 are lower than the committee's recommendations, and lower than the appropriations for fiscal year 2011, except for the appropriations to the HSD for Medicaid.

The total amount appropriated for recurring programs for fiscal year 2012 is $19,775,800. The discrepancy between the total amount appropriated for recurring programs and the amount recommended for appropriation by the TSROC is the balance in the program fund that was appropriated to supplement the HSD's Medicaid budget. The total solvency funding is an additional $19,776,000, bringing the total amount appropriated from the Tobacco Settlement Program Fund to $39,551,800.

Ms. Knight informed the committee that the Department of Finance and Administration (DFA) advised agencies in April 2011 of reduced allotments based on the 2011 actual tobacco settlement payment, which resulted in a revised operating budget for 2012. According to the revised operating budget, the final amount allocated to recurring programs is $19,111,500, and the final amount allocated to Medicaid solvency for the HSD is $19,453,900, bringing the total amount allocated from the Tobacco Settlement Program Fund to $38,565,400. Ms. Knight told the committee that the spreadsheet also showed the 2012 program allocations by the University of New Mexico (UNM) Health Sciences Center. Ms. Knight explained that while the allotments for other programs funded by the Tobacco Settlement Program Fund were reduced proportionately, UNM has been allowed more flexibility in allocating its budget. Ms. Knight pointed out that numbers provided by UNM indicate that two programs, the Area Health Education Center and Los Pasos, which were both appropriated $36,300, were allocated no money by UNM. Committee members asked Ms. Knight numerous questions about the spreadsheet and UNM's authority to reallocate money, including where the money went that was reallocated. Ms. Knight informed the committee that staff will continue to research the budget issues by consulting with the LFC, the DFA and UNM.

Committee members expressed concern about recidivism rates in cessation programs, teen smoking and the importance of ensuring that funds go to the most effective programs.

MSA and Litigation Update
—Nan Erdman, Assistant Attorney General, AGO
—Claudia Ravanelli, Special Projects Coordinator, AGO

Ms. Erdman presented a detailed summary of the history of the tobacco MSA. Ms. Erdman explained that in 1994, the states began to sue the major tobacco companies over the health care costs associated with tobacco sales. In 1998, 46 states and five territories entered into a joint settlement that resulted in the MSA. The tobacco companies that joined the MSA are called participating manufacturers (PMs). The PMs agreed to limit advertising and marketing and to make payments to the states in perpetuity commensurate with the products sold in each state to reimburse the state for the health care costs that result from the sale of tobacco products. In exchange, the states agreed to enact model legislation or a similar qualifying statute that would allow the states to charge an escrow payment from nonparticipating manufacturers (NPMs) and to enforce the statute diligently.

Ms. Erdman said that the payments to the states are about 50 cents per pack. She noted that the $30 million to $40 million that New Mexico receives per year in tobacco settlement payments does not account for the $200 million or more that New Mexico incurs for the costs of health care related to smoking.

Ms. Erdman explained that a crucial part of the MSA allows for PMs to receive a refund of their payments if the state does not meet its obligations under the MSA. The PMs are entitled to an adjustment if:

(1) the PMs lose more than two percent in market share compared to their 1998 market share;

(2) an independent economics firm determines, in a non-appealable proceeding, that the MSA was a "significant factor" in the PMs' market share loss;

(3) the state does not have a qualifying statute; and

(4) the state has not diligently enforced the statute, which is measured by verifying escrow payments from the NPMs selling in the state. This NPM adjustment is directed at preventing NPMs from gaining an unfair price advantage because of the MSA.

Ms. Erdman explained that the MSA states are in arbitration over the question of diligent enforcement. As a consequence of the diligent enforcement claims, PMs are withholding a percentage of revenues and placing money into a disputed payment account. The amount in escrow for New Mexico in the disputed payment account currently is between $10 million and $15 million. The PMs claim that they are entitled to an adjustment of NPM for every year from 2003 to the present based on the failure of the MSA states to enforce their statutes diligently. Ms. Erdman said that the PMs have already prevailed in demonstrating that they lost market share and that the MSA was a significant factor for every year up to 2008. New Mexico now must show that it diligently enforced its statute. Ms. Erdman said that the AGO expects the 2003 arbitration to cost $500,000 in litigation expenses. According to charts provided by the AGO, if New Mexico loses the arbitration, the state risks losing $350 million in payments. This money would be withheld from future payments, so the state would not receive annual tobacco settlement revenue for several years.

Ms. Erdman said that one possible change for New Mexico in the future would be to collect escrow on every cigarette sold in New Mexico. She said that Senate Bill 397 would have taken a big step toward that goal, but it was vetoed by the governor. She also discussed a potential settlement agreement that was recently reported in *The Wall Street Journal*. One element of the settlement would be to pass legislation that has similar language to Senate Bill 397. The rest of the settlement would impose stricter regulations associated with tribal sales. Failure to pass the proposed legislation or to add substantial diligent enforcement resources would result in significant reductions in MSA payments. Ms. Erdman said that the settlement agreement needs the agreement of the critical mass of states, but some states are not likely to agree. A response to the settlement proposal is due July 1, 2011.

Ms. Erdman informed the committee that the PMs are also challenging New Mexico's qualifying statute. The PMs contend that New Mexico has not had a qualifying statute since 2006. Ms. Erdman explained that New Mexico's statute, enacted as Sections 6-4-12 and 6-4-13 NMSA 1978, includes the exact language of the model statute proposed in 1998. However, the PMs are claiming that changes to the Cigarette Tax Act (Chapter 7, Article 12 NMSA 1978) made in 2006 to provide for exempt stamps had an impact on what New Mexico could collect escrow on. The AGO believes that New Mexico has a qualifying statute, but it will have to fend off the challenge. She said that New Mexico is one of only two states that the PMs claim do not have qualifying statutes. If New Mexico is found not to have a qualifying statute, the state is at much greater risk for losing its MSA payment for 2006 through the present, until the state has a full calendar year with a qualifying statute. Ms. Erdman provided the committee with charts to demonstrate the history of payments to New Mexico pursuant to the MSA (which payments amount to almost half a billion dollars since 1999), the payments at risk in arbitration, the payments at risk for failure to have a qualifying statute (about $240 million) and the projected payments to New Mexico from 2003 through 2012 (which are zero for 2012).

Ms. Erdman discussed the importance of passing legislation similar to Senate Bill 397. She said that Senate Bill 397 would have made the possibility of any challenge to the qualifying statute unlikely to succeed and more likely that the state could prevail in NPM adjustment proceedings. She said that the bill would have clearly established the state's ability to collect escrow on all sales that have a tribal stamp, an excise stamp or an exempt stamp.

Ms. Erdman and Ms. Ravanelli briefly discussed enforcement issues and lawsuits against the state over the escrow issue.

The committee asked numerous questions about the vetoed legislation, the challenge to the qualifying statute and the amount of money at risk due to the challenge. Upon inquiry from the committee about how New Mexico's enforcement efforts compare to other states, Ms. Erdman explained that it all comes down to the definition of "units sold" in Senate Bill 397. She explained that for 2003 to the present, the PMs are contending that New Mexico should have been collecting escrow on all tribal sales, which is 90 percent of all sales. She said that in 2009, New Mexico passed a law to collect escrow on all sales. She said that New Mexico has always done a good job of collecting escrow on excise tax cigarettes.

Ms. Erdman said that the AGO is not sure whether the provision authorizing the $30 million transfer from the Tobacco Settlement Permanent Fund to the Unemployment Compensation Fund is constitutional and noted that a committee member could ask the attorney general for a formal opinion. Representative Picraux said that she would write a letter asking for a formal opinion.

The committee asked for an update from the AGO in October. Ms. Erdman said that Attorney General Gary King is writing an opinion piece on the vetoed legislation for *Round the Roundhouse*. The committee requested that the AGO send the article to staff for distribution to committee members.

The committee discussed the costs to the state for any health care costs resulting from smoking and noted that the American Cancer Society could provide that data at a future meeting.

2011 Interim Work Plan and Meeting Schedule Development

The committee reviewed the proposed work plan. Representative Chasey requested that an item concerning a review of how allotments are made from the Tobacco Settlement Program Fund be deleted from the 2011 proposed work plan. On a motion by Senator Garcia, seconded by Representative Hall, the committee unanimously approved the revised work plan.

The committee also discussed the possibility of changing the July meeting to the week in September following Labor Day if the special session for redistricting is not planned for that time.

Adjournment

The committee adjourned at 12:35 p.m.

MINUTES
of the
SECOND MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

July 13, 2011
Room 311, State Capitol
Santa Fe, NM

The second meeting of the Tobacco Revenue Settlement Oversight Committee (TSROC) was called to order by Representative Gail Chasey, co-chair, on July 13, 2011 at 10:28 a.m. in Room 311 of the State Capitol in Santa Fe. The co-chair announced that the meeting was being webcast.

Present	**Absent**
Rep. Gail Chasey, Co-Chair	Sen. John C. Ryan
Sen. Mary Jane M. Garcia, Co-Chair	
Sen. Dede Feldman	
Rep. Jim Hall	
Rep. Danice Picraux	
Advisory Members	
Rep. Ray Begaye	Sen. Sue Wilson Beffort
Sen. Linda M. Lopez	Sen. Mary Kay Papen

Staff
Alise Rudio
Roxanne Knight
Zelda Abeita

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file.

Wednesday, July 13

The committee members introduced themselves. Upon a motion made by Representative Picraux, seconded by Senator Feldman, the minutes from the previous meeting were adopted.

Committee members discussed the need to understand and be able to explain the potential consequences of the veto of 2011's Senate Bill 397. Upon a request from the committee, Nan Erdman, assistant attorney general, Attorney General's Office (AGO), agreed to provide a simple written explanation that included a short background and a brief statement of the relevant issues.

Tobacco Control Overview; Tobacco Control Progress in New Mexico

Sandra Adondakis, New Mexico government relations director, American Cancer Society Cancer Action Network (ACS CAN), provided an update on the federal Patient Protection and Affordable Care Act of 2010 (PPACA) and tobacco use prevention and control. Changes under the PPACA include mandatory coverage by private insurance for smoking cessation and other preventive services and more federal funding for community-based prevention programs. With respect to Medicaid coverage for cessation services, the PPACA requires mandatory coverage for pregnant women, increased federal reimbursements for states that cover cessation services and mandatory coverage of smoking cessation medications. Ms. Adondakis noted that there will be a 100 percent federal match for providing telephone quitline services to Medicaid beneficiaries.

Ms. Adondakis provided an update on electronic cigarettes, or e-cigarettes. On April 25, the federal Food and Drug Administration decided to regulate e-cigarettes as tobacco products instead of drug-delivery devices. She said that there is no scientific evidence that e-cigarettes are safe or that they help people quit smoking. The ACS CAN will continue to focus on advocating for smoke-free work environments, pricing strategies that disincentivize youth tobacco use and full funding for tobacco control programs.

Ms. Adondakis discussed New Mexico's progress in reducing the impact of tobacco. She said that New Mexico has made significant progress in implementing policies that are proven to decrease tobacco-related death and disease. Those policies include requiring insurers to cover tobacco cessation treatment, passing the Dee Johnson Clean Indoor Air Act, raising cigarette taxes to $1.66 per pack and funding comprehensive tobacco control programs. She presented information about tobacco control funding and smoking rates. Funding for tobacco control progressively increased from fiscal year 2003 until fiscal year 2010 before decreasing in the last two years. Meanwhile, the adult smoking rate has decreased from 23.8 percent in 2001 to 17.9 percent in 2009. Ms. Adondakis compared the adult smoking rate in New Mexico to rates across the nation and in other states. Among youths, tobacco use rates are 24 percent, which is above the national average of 19.5 percent. New Mexico ranks first among the states in youth cigar use. Ms. Adondakis said that the federal Centers for Disease Control and Prevention recommend that a minimum of $23 million to $25 million be spent on tobacco control programs to see significant decreases in tobacco use and tobacco-related disease. She said that when program funding decreases, which has occurred in New Mexico over the past two years, states see an increase in smoking rates.

Ms. Adondakis said the ACS CAN promotes restoring funding to tobacco control programs after a two-year decrease, a return to saving 50 percent of the Master Settlement Agreement (MSA) payments in the Tobacco Settlement Permanent Fund, defending the Dee Johnson Clean Indoor Air Act and increasing the tax on non-cigarette tobacco products.

Committee members had comments and questions about the number of pregnant women who smoke, the level of federal reimbursements, the number of people who take advantage of tobacco cessation programs, the amount of money New Mexico spends for tobacco-related illness compared to the amount it collects in cigarette taxes, the marketing tactics of the tobacco companies, the amount of money tobacco companies spend on advertising and whether the Department of Health uses certain strategies to reach specific populations in tobacco control programs.

Committee members also discussed the possibility of passing legislation to increase taxes on non-cigarette tobacco products. Representative Picraux volunteered to carry a bill to deal with tax loopholes on such products.

Tobacco MSA and Litigation Update (Continued)

Ms. Erdman answered questions from committee members about her presentation at the first meeting. Committee members discussed the need for a clear picture of the issues that were being discussed. Ms. Erdman agreed to try to create a chart for the committee.

Committee members had questions and comments about smokeless tobacco products and about a recent news article that reported that the AGO was investigating whether a store owned by Arthur P. Allison, secretary-designate of Indian affairs, is selling contraband cigarettes. Ms. Erdman gave the committee a copy of a letter that the AGO sent to Governor Martinez that claimed that the store was selling unstamped, untaxed cigarettes to non-tribal members. Ms. Erdman told the committee that she could not discuss the investigation. However, in response to a question about legal remedies, she said that the AGO is seeking compliance with New Mexico's statutes.

The committee members asked Ms. Erdman about the sale of contraband cigarettes in New Mexico and the use of the tax credit program by tribes.

Wayne Bladh, an attorney who represents Kewa Pueblo, the Pueblos of Taos, Santa Ana and Laguna and Indian Pueblos Marketing, Inc., questioned some of the statements made by the AGO and offered to present the committee with a written explanation of the law.

Drew Setter, a lobbyist for several pueblos, discussed the Navajo Nation's efforts to pass a tribal cigarette tax. He explained that the Navajo Nation is imposing a $1.00 per pack tax but that the ordinance has not been certified by the Taxation and Revenue Department.

Tobacco Settlement Permanent Fund Performance and Balances

Steve Moise, state investment officer, Vince Smith, deputy state investment officer, and Charles Wollmann, director of communications, State Investment Council (SIC), provided an update on the status of the Tobacco Settlement Permanent Fund. Mr. Moise began by providing an overview of SIC reforms implemented between April 2010 and July 2011. He discussed investment performance, litigation, investigations and legislative matters.

Mr. Wollmann and Mr. Smith provided current information regarding the Tobacco Settlement Permanent Fund. The fund was created in May 2000 with a market value of $49 million. At the last committee update in September 2010, the fund was valued at $138.8 million. As of May 31, 2011, the fund was valued at $188.6 million, but $38.6 million was distributed in June 2011, which leaves an approximate current value of $150 million. Mr. Wollmann noted that there have not been any new contributions since fiscal year 2008. He noted that House Bill 79 (Laws 2011, Chapter 3) provides that for fiscal years 2012 and 2013, 100 percent of the tobacco settlement payments into the Tobacco Settlement Permanent Fund will be distributed to the Tobacco Settlement Program Fund. Mr. Wollmann also discussed House Bill 52 (Laws 2011, Chapter 167), which added language to require the Tobacco Settlement Permanent Fund to be invested "in accordance with limitations" of land grant fund investments.

Mr. Wollmann noted that language in the General Appropriation Act of 2011 authorizes a transfer of up to $30 million during fiscal year 2012 from the Tobacco Settlement Permanent Fund to the benefit account of the Unemployment Compensation Fund under certain circumstances. He said that the SIC was not asked for an opinion on the language. The SIC representatives explained that, as managers of the fund, the SIC must set aside $30 million in cash in case money is needed for the loan. They said that the provision does not address interest and noted that the state could lose interest by keeping the money in cash.

Mr. Wollmann mentioned the veto of Senate Bill 397 and statements made by the attorney general about the risk of losing $160 million, or four years of tobacco payments, due to the question of whether New Mexico is in compliance with the MSA's escrow requirements. A discussion followed about the need to clarify the various scenarios of risk that the state faces. The committee members asked the SIC to speak with the AGO.

Mr. Smith reviewed the allocation of the assets of the fund into investments and said that a new asset allocation study is underway. Returns, on average, have shown modest growth.

Upon inquiry from the committee, Mr. Smith discussed how the SIC would invest the fund if it were not designated as a reserve fund. Mr. Smith responded that the investment would be more "long term". The fund was designated a reserve fund in 2003.

Tobacco Use Prevention and Control (TUPAC) Program Report, Indian Affairs Department (IAD)

A program report on the IAD's TUPAC program by Secretary-Designate Allison was canceled by the agency.

Adjournment

There being no further business before the committee, the second meeting of the TSROC adjourned at 2:44 p.m.

MINUTES
of the
THIRD MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

August 16, 2011
Room 311, State Capitol
Santa Fe, New Mexico

The third meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Gail Chasey, co-chair, on August 16, 2011 at 10:15 a.m. in Room 311 of the State Capitol in Santa Fe.

Present	**Absent**
Rep. Gail Chasey, Co-Chair	Sen. Dede Feldman
Sen. Mary Jane M. Garcia, Co-Chair	Sen. John C. Ryan
Rep. Jim W. Hall	
Rep. Danice Picraux	

Advisory Members	
Sen. Sue Wilson Beffort	Sen. Linda M. Lopez
Rep. Ray Begaye	
Sen. Mary Kay Papen	

Staff
Alise Rudio
Roxanne Knight
Zelda Abeita

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file.

<u>Tuesday, August 16</u>

Department of Health (DOH) Report
Dr. Catherine Torres, secretary of health, reported on the DOH's progress and opportunities for fiscal years 2011 and 2012 with respect to the following programs: tobacco use prevention and control (TUPAC); hepatitis and harm reduction services; diabetes prevention and control; and breast and cervical cancer (BCC) screening and diagnosis. She was assisted by David M. Vigil, M.B.A., chief, Chronic Disease Prevention and Control Bureau, DOH, Dominick V. Zurlo, program manager, harm reduction and medical cannabis program, DOH, and Patty Morris, Ph.D., director, Office of Nutrition and Physical Activity, DOH.

Secretary Torres told the committee that the DOH saw a 36.4 percent cut in tobacco settlement revenue from fiscal year 2009 to fiscal year 2012. In fiscal year 2012, there was an additional 2.5 percent reduction from the original appropriation due to revenue shortfall. It has not yet been determined whether there will be any additional reductions to the fiscal year 2012 appropriation, as the revenue will not be collected until April 2012.

TUPAC Program

Secretary Torres said that funding for the TUPAC program has decreased from $8,394,915 in fiscal year 2010 to $5,685,000 in fiscal year 2012. Due to funding shortfalls, the DOH is giving priority to program activities that are more efficient at reaching the targeted populations. The DOH used guidance from the federal Centers for Disease Control and Prevention (CDC) to select the most efficient activities for the funding level. Secretary Torres reported that calls to Quitline increased from 9,173 in fiscal year 2008 to 12,451 in fiscal year 2011. She presented statistics about tobacco use in New Mexico. Among adults, the rate of cigarette smoking has declined from 23.8 percent in 2001 to 18.5 percent in 2010 while the percentage of adults who use spit or chew tobacco has gone up from 3.2 percent in 2003 to 4.2 percent in 2009. Among high school-age youth, the DOH reported that the rate of cigarette smoking was 25 percent in 2001, 30.1 percent in 2003 and 24 percent in 2009. Smoking is most prevalent among adults ages 25 to 34 (25 percent) and among those whose annual household income is less than $15,000 (29.6 percent). Secretary Torres discussed a new youth tobacco use prevention media campaign called "SHOW UR NO", which tries to use social media to encourage youth not to smoke.

Hepatitis and Harm Reduction Program

Mr. Zurlo discussed funding for the DOH's hepatitis and harm reduction programs over the past three fiscal years. HIV/AIDS services received $70,000 in fiscal year 2010 and nothing in fiscal year 2011 and fiscal year 2012. The hepatitis program received $106,000 in fiscal year 2010, $46,080 in fiscal year 2011 and $43,400 in fiscal year 2012. The harm reduction program received $256,870 in fiscal year 2010, $252,620 in fiscal year 2011 and $249,600 in fiscal year 2012. Due to nurse contracts that are funded by tobacco settlement revenue, the DOH was able to investigate 1,000 cases of hepatitis C, obtain 3,726 adult blood specimens for hepatitis tests and provide 1,676 hepatitis vaccinations to high risk clients in county jails and harm reduction sites. In addition, the DOH was able to give syringes to 31,080 people, collect an anticipated three million syringes and have about 4,000 active patients enrolled in the program. Mr. Zurlo explained that hepatitis and harm reduction activities include HIV/AIDS counseling, education and referrals.

Diabetes Prevention and Control Program

Mr. Vigil reported that in fiscal year 2011, the tobacco settlement revenue for the diabetes prevention and control program was spent on staff, services, professional development and other projects, including: producing guides for implementing community walking programs; developing a shared strategic plan required by the CDC to address diabetes, heart disease and stroke prevention and tobacco use; creating diabetes and pre-diabetes modules for New Mexico's Behavioral Risk Factor Surveillance System annual survey; and producing a media campaign about tobacco use and diabetes for the Navajo Nation as well as radio spots and newspaper ads about pre-diabetes. He reported that the number of adults with diabetes in New Mexico has risen from 121,194 in 2000 to 164,795 in 2009. He said that the rate is increasing due to an aging population and unhealthy lifestyles.

Healthy Kids New Mexico

Dr. Morris discussed the healthy kids healthy communities program, which aims to create and sustain healthy policies and environments to motivate people to eat healthier, be more physically active and achieve healthy weights. She said that she oversees the new Office of Nutrition and Physical Activity, which is implementing a five-year strategic plan to reduce obesity and diabetes, especially among children. The model uses a local and state collaborative effort composed of leaders representing government, education, health care, human and social services, agriculture, nonprofit and faith-based organizations, academia, foundations and businesses. Dr. Morris said that the healthy kids program started as a pilot program in Las Cruces in 2007 and was replicated in other communities. In 2009, Healthy Kids Las Cruces was named one of the top 10 models in the nation for helping to reduce childhood obesity. Funding from tobacco settlement revenue for Healthy Kids New Mexico is being used to fund healthy kids programs in five communities: Las Cruces, Chaves County, McKinley County, the Pueblo of San Ildefonso and the Pueblo of Santa Clara. The DOH is no longer funding a program at the Pueblo of Cochiti. Tobacco settlement revenue funds are also used to conduct training in assessing nutrition and physical activities in the schools and best practices for health care provider obesity prevention.

BCC Early Detection Program

Mr. Vigil told the committee that the DOH's BCC early detection program receives tobacco settlement funds for the direct provision of clinical care. The funds are used to help the program provide mammograms and make the match required by the CDC for the federal grant. Mr. Vigil said that since the program was established in 1991, it has provided comprehensive BCC screening and diagnostic services to more than 149,000 women in New Mexico. He further discussed the impact of screening and diagnosis and the requirements for being eligible for the BCC program. He said that in fiscal year 2011, the BCC program served 14,453 women from all funding sources combined. With tobacco settlement revenue funds, he said that an estimated 1,099 women were served in fiscal year 2012 due to the appropriation of $128,600, compared to 2,105 women served in fiscal year 2010 due to the appropriation of $184,200. Mr. Vigil said that the DOH is limited in its ability to increase efficiencies because 100 percent of the funds from tobacco settlement revenue already go to direct clinical care. However, the DOH is integrating a colorectal cancer screening program into the existing BCC infrastructure and increasing integration with other DOH chronic disease control programs.

Upon inquiry from the committee, Mr. Vigil discussed the request for proposals (RFP) process for the TUPAC program. Mr. Vigil explained that the DOH developed an RFP in the spring but, due to the change in administration and the need to address funding cuts and CDC requirements, the contracts were not awarded on July 1, 2011. When asked if there was an interruption in the programs, Mr. Vigil said that the contracts ended on June 30, 2011. He said that the DOH has issued a new RFP for contractors for the TUPAC program and that he does not think that there will be any lapses in the future.

The committee discussed at length the importance of nutrition and physical activity for children and asked about ways to promote health in the schools and to reach out to the community for volunteers. Dr. Morris discussed how the DOH works with local coalitions and schools by initiating programs such as the fruit and vegetable tasting program in the schools and encouraging children to take 10 minutes out of the school day for physical activity. The discussion addressed the need to make communities safer so that children can get outside and play. The discussion also addressed the problems of fast food, soda and closed school yards.

Committee members commented on the importance of using schools to provide a safe, active environment for recreation. Dr. Morris suggested that nutrition and exercise are cultural issues and that the same thing has to be done with food and activity that was done with tobacco cessation.

Other issues discussed by the committee included: the source for the smoking rate statistics; the result of the needle exchange program on drug use and harm prevention; the need for coordination among institutions to promote healthy children; the need for consistency in funding; and whether there is a correlation between activity and smoking rates.

Upon a motion made by Representative Picraux, seconded by Senator Garcia, the minutes from the previous meeting were adopted.

Human Services Department (HSD) BCC Program Report

Dr. Anne Foster-Rosales, M.D., M.P.H., medical director, Medical Assistance Division, HSD, and Virginia Alcon, staff manager, Medical Assistance Division, HSD, discussed the history of the Medicaid BCC category of eligibility. Dr. Foster-Rosales said that 1,738 women have been enrolled in the Medicaid BCC treatment program. In fiscal year 2011, there were 449 BCC individuals with paid claims and total expenditures of $6,848,112; however, the data are not complete because of a lag in the claims adjustment period. Dr. Foster-Rosales provided a breakdown of costs for fiscal year 2011, noting that the largest costs are for outpatient services and practitioner and physician services. She discussed several cost-containment efforts of the last two years that potentially affect BCC members, but noted that benefits for BCC members have not been reduced.

Upon inquiry from the committee, Ms. Alcon explained that the Medicaid benefits provided are full Medicaid benefits, including dental services, and are not limited to cancer-related services. Ms. Alcon also said that the HSD receives a higher federal match for the BCC program, but that the HSD does have to match the state share from the appropriation. When asked if money could be saved by using generic drugs, Dr. Foster-Rosales said that the majority of the savings come from the drug rebate program, which goes back into the Medicaid program.

University of New Mexico Health Sciences Center (UNM/HSC) Report

Dr. Richard Larson, M.D., Ph.D., vice chancellor for research, senior associate dean for research, UNM, reviewed the history of the UNM/HSC's use of tobacco settlement funds. He said that the original intent was to use the funds for tobacco-related illnesses, to support biomedical research and to fund other needed health-related programs. He said the critical needs programs for New Mexico focus on patient care, education and research. Dr. Larson presented a chart showing the funding of programs at the UNM/HSC from tobacco settlement funds since 2001 and discussed the effects of continued cuts on core programs in fiscal years 2010 and 2011. In 2001, the UNM/HSC started its core programs; Lovelace Respiratory Research Institute (LRRI) also received funding through UNM. Beginning in 2007, tobacco settlement funds were used to augment instruction and general (I & G) funding. Dr. Larson explained that the core programs absorbed progressive reductions in funding and attempts were made to modify programs to make them more efficient. In fiscal year 2012, when no additional efficiencies were possible, the UNM/HSC asked for a single appropriation, which it received. Dr. Larson said that through the single appropriation, the UNM/HSC was granted flexibility to make its own allocations among the historic tobacco settlement programs.

Dr. Larson then provided an overview of the programs supported by tobacco settlement funds. The core projects include the New Mexico Poison and Drug Informatics Center, the UNM/HSC biomedical research (genomics, biocomputing and environmental health research) and the pediatric oncology program. The replacement of I & G funds is used for specialty education trauma. Core programs not receiving tobacco settlement funds in 2012 include the area health education centers, Los Pasos and the Center for Telemedicine, which are being funded through alternative means. He explained that state funding, which was as high as $5,400,000 in fiscal year 2007 and fiscal year 2009, was reduced to $2,767,127 in fiscal year 2012. The effects of state funding reduction include lost clinical and research jobs, reduced recruitment of health professionals to rural and medically underserved areas, increased health care costs to New Mexico, reduced federal funding for research and clinical care, reduced clinical care, staff cuts resulting in fewer services provided to children with cancer and decreased outreach resulting in increased health care costs. Dr. Larson described the benefits of sustaining the core programs and I & G replacement programs and explained how the funds are used. He discussed the effect of funding reductions on the core programs from fiscal year 2009 to fiscal year 2011.

Dr. Larson explained that pilot funding is the primary mechanism for obtaining federal support and returns $8.00 to $20.00 for every $1.00 invested. He provided an example of pilot funding used to develop a device for the rapid diagnosis of infection or other diseases. He presented a chart to show how funds that are used to support salaries create more jobs at UNM and in the local economy through the leveraging of federal funds. He also explained that since 2001, 34 new private companies either spun off from the university or used university technology to start up, which resulted in 1,272 new sustainable jobs in the private sector. He described how clinical and intervention trials bring the latest treatments and technologies to New Mexico and how tobacco settlement funding has provided infrastructure support to 176 trials. He then reviewed the evaluation process, which was presented to the TSROC from 2005 to 2010. He said that further reductions in finding will result in reduction of services, loss of federal matching funds, a loss of new federal funds and loss of jobs and will compromise clinical, research and education missions. To address funding reductions, the UNM/HSC is asking for stable funding and no midyear cuts.

The committee asked about telemedicine funding and the UNM/HSC's total budget. Dr. Larson explained that telehealth has no tobacco settlement funds this year but has federal funding for the next three years. He said that the total budget for the hospital and the HSC is $1.2 billion. He said that half of the tobacco settlement funds go into research and half into clinical programs and education. He said that the total research budget is $146 million, which includes no state dollars. He explained that although the tobacco settlement funds are not a significant part of the budget, they are important for "seed" funding. Of the $1 million in research, 30 percent goes to seed money and is critical because of leveraging. In response to questions from the committee, he discussed licensing and royalty rights. He also described Project ECHO (extension for community healthcare outcomes), although tobacco settlement funds have not gone to Project ECHO. Dr. Larson explained that New Mexico has one of the best developed telemedicine programs in the country. The committee noted that the presentation of the economic impact of funding in terms of jobs and commercialization was very powerful and noted the importance of trying to minimize cuts.

LRRI Report

Dr. Robert W. Rubin, Ph.D., president and chief executive officer, LRRI, provided an historical perspective regarding research on tobacco products and the history of the LRRI, which he said is the only private basic-science, biomedical research organization totally dedicated to the study of respiratory diseases. Dr. Rubin said that historically, funds have been appropriated to the LRRI through the UNM/HSC appropriation from the tobacco settlement funds. These funds have been used to create infrastructure at the LRRI that supports more than 1,000 jobs in New Mexico. Jobs are created by leveraging technologies to service more than 250 commercial clients in the biotechnology and pharmaceutical and device industries.

Dr. Rubin explained that the LRRI lacks the ability to close the loop and marry capabilities with the discovery and clinical trial infrastructure at the UNM/HSC that would then keep the discovery in-state and create new companies and high-paying jobs. This year, the LRRI is partnering with the UNM/HSC to propose a joint drug development program. Under the proposal, funds would be used to pay scientists to design protocols for individual therapies coming out of the UNM/HSC. Funds would then be used to keep the discoveries in state for formulation and animal testing. The LRRI would then find the appropriate manufacturer for final production of the product. Dr. Rubin explained that together, the LRRI and UNM/HSC possess all of the technology and infrastructure necessary to develop new drugs and devices for medical use. He said that the two organizations have never had the resources to merge the capabilities together and offer start-up companies the support necessary to create biotechnology and pharmaceutical companies in New Mexico. Under the proposal, the LRRI and UNM/HSC request tobacco settlement funding to be reinstated at the original level of $1 million to create a new combined drug and device development center.

Upon inquiry from the committee, Dr. Rubin said that the LRRI does not provide smoking cessation services but does conduct studies on smoking cessation drugs. Committee members discussed the budget impacts to the LRRI and UNM/HSC, how tobacco settlement funds are used at the LRRI and the need to avoid redundancy among programs.

Indian Affairs Department (IAD) TUPAC Program Report

Arthur P. Allison, secretary-designate of Indian affairs, briefly introduced himself and gave an overview of the IAD's TUPAC program. He explained that the program contracts with Keres Consulting, Inc., which provides reporting, monitoring and other administrative activities. Allie Thompson and L. Stephine Poston of Keres Consulting, Inc., reported statistics about state and national cigarette smoking rates among adults and youth. In 1999, high school-age American Indian youth had the highest rate (27 percent) of smokers of any racial or ethnic group in New Mexico. Ms. Thompson provided a history of the IAD TUPAC program, which was established in 2008 through a $500,000 appropriation. The program's overall goals are to promote the cessation and prevention of commercial tobacco abuse in Native American communities while also promoting cultural awareness of traditional and ceremonial uses of tobacco among Native Americans. Ms. Thompson explained how the funds were used in 2011. Grantees included the Albuquerque Indian Center, Pueblo of Isleta, Jicarilla Apache Nation, Pueblo of Laguna, Oso Vista Ranch Project, Pueblo of Pojoaque, Pueblo of Santa Clara, Pueblo of Tesuque and Tohatchi (District 14) in the Navajo Nation. In reviewing the performance data for the grantees, Ms. Thompson described the number of people served, the nature of the programs offered and how the grants align with the New Mexico Tobacco-Related Disparities Strategic Plan focus areas. Ms. Thompson noted that despite decreased funding, more people are being served by the IAD's TUPAC program. She said that 20 tribal program managers, IAD representatives and program facilitators met on August 18, 2010 to discuss ways to: (1) further the impact of tobacco cessation programs directed toward Native Americans; (2) gain a clear understanding of state reimbursement and reporting requirements; and (3) focus on collaboration in 2010-2011. Ms. Thompson reported that the IAD received $293,800 in tobacco settlement revenue for programs in fiscal year 2011 and used 100 percent of the money appropriated. The IAD also supplemented the funds with $106,200 from its general operating funds. She provided a breakdown of money spent by Keres Consulting, Inc., which was the only contractor.

The committee members asked how ceremonial tobacco is sold, whether tribal smoke shops require identification and whether tribal law enforcement agents conduct sting operations. The committee also asked whether certain cessation rates are sustainable and why the number of people served was low for the Jicarilla Apache Nation and Tohatchi. The committee briefly discussed a discrepancy between the smoking rate for American Indian adults quoted by the IAD versus the one quoted by the DOH. It was pointed out that the state's data might be more current than data from national sources. The committee also noted that the IAD used to receive $500,000 for its TUPAC program but now only receives a little under half of that. Larry Elmore, the former program manager of the DOH's TUPAC program, noted that the IAD has been much more successful with implementing its TUPAC program than the DOH was. Upon inquiry from the committee, Lillian Brooks, administrative services director, chief financial officer, IAD, explained that the IAD is systematically reducing the allotments proportionately between the nine programs based on the reduced appropriations. The committee asked if IAD programs are using CDC guidelines as part of their best practices. Ms. Poston said that they have discussed implementing evaluation tools.

The committee recognized Mr. Elmore, who recently retired from the DOH, and thanked him for his years of service to the state. Representative Hall said that the success of the committee depends on outstanding staff members like Mr. Elmore. Mr. Elmore thanked the committee for its work and for saving lives.

Adjournment

There being no further business before the committee, the third meeting of the TSROC adjourned at 4:15 p.m.

Unapproved
MINUTES
of the
FOURTH MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

October 31, 2011
State Capitol, Room 311
Santa Fe

The fourth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Senator Mary Jane M. Garcia, co-chair, on October 31, 2011 at 10:15 a.m. in Room 311 of the State Capitol.

Present	**Absent**
Rep. Gail Chasey, Co-Chair	Sen. John C. Ryan
Sen. Mary Jane M. Garcia, Co-Chair	
Sen. Dede Feldman	
Rep. Jim W. Hall	
Rep. Danice Picraux	

Advisory Members
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Sen. Linda M. Lopez
Sen. Mary Kay Papen

Staff
Roxanne Knight
Cassandra Jones

Guests
The guest list is in the meeting file.

Handouts
Handouts and written testimony are in the meeting file.

Monday, October 31

Committee members and staff introduced themselves.

Proposed Legislation for 2012 Legislative Session: Arbitration Update

Nan Erdman, assistant attorney general, Attorney General's Office (AGO), introduced Scott Fuqua, director of the Litigation Division, AGO, and explained that he will be managing the AGO's legislation for the 2012 session. Senate Bill 397 was passed by the legislature in 2011, but it was subsequently vetoed by Governor Martinez. Mr. Fuqua and Damian Lara, staff attorney with the Legislative Council Service, briefly discussed a proposed bill that is identical to SB 397 except that an applicability clause has been added to clarify the date of application of the act.

Ms. Erdman stated that the AGO is considering ways to track the number of cigarettes sold in New Mexico more accurately, particularly cigarettes sold on tribal lands. The Taxation and Revenue Department (TRD) has auditors that go to stores to verify the presence of tax stamps on cigarettes sold. Off-reservation sales have few instances of noncompliance. When auditors find stores that are not in compliance with tax stamp regulations, they notify the AGO.

Ms. Erdman explained that sellers on tribal lands are less likely to comply with tax stamp regulations. The TRD does not audit stores located on tribal lands; rather, the AGO staff will perform random checks on tribal property. Any noncompliance with tax stamp laws is reported to the AGO, and action is taken against the distributor and the manufacturer. No action is taken against the retailer. In response to questions from members of the committee, Mr. Fuqua stated that the AGO does work with tribal representatives; however, the state does not have any formal compacts with tribal entities for enforcement of tax stamp regulations. Penalties may be imposed for failure to follow regulations. Mr. Fuqua noted that New Mexico is compliant with the diligent enforcement provisions of the Master Settlement Agreement (MSA). Representative Hall explained that he would support arrangements that would help to actively track tobacco sales. He inquired about the penalties for selling without the proper tax stamps, to which Ms. Erdman responded the state could ask for up to 300 percent of the tax due. However, the AGO settles with manufacturers, and the penalty depends on the level of culpability.

Ms. Erdman told the committee that the manufacturers participating in the MSA will announce which states are not being contested in the MSA arbitration on November 3, 2011.

Ms. Erdman explained that the arbitration still has 46 states and six territories included. In response to questions from a committee member, Ms. Erdman clarified that the MSA calls for an economics firm to make decisions in certain instances.

Members of the committee discussed the governor's veto of SB 397 after the last session. Representative Hall and some members expressed an interest in participating in a November 7 meeting between the AGO and the Governor's Office. Additionally, the members offered to sign on as sponsors to the bill after it might be prefiled.

In response to questions from the committee, Ms. Erdman clarified that the distributor is responsible for making sure cigarettes from the manufacturer are in the directory and that they receive the appropriate stamp. A complex auditing process is performed throughout the year to ensure that reports from the distributor and the manufacturer reflect the same numbers and that the appropriate taxes have been paid. Senator Feldman made a motion that the TSROC endorse the proposed AGO legislation to amend the Cigarette Tax Act to clarify that cigarette packs stamped with tax-credit stamps are "units sold" for the purpose of determining escrow payments due pursuant to the MSA. The motion was seconded and adopted unanimously.

Ms. Erdman noted that an earlier motion at an interim meeting of the Revenue Stabilization and Tax Policy Committee was successful and that Speaker Ben Lujan had offered to carry the legislation.

Representative Chasey inquired about how it happened that an economics firm, and not a court of law, is making the diligent enforcement decision. Ms. Erdman noted that the MSA contains the requirement, and there may be appellate challenges. Participating manufacturers are anticipated to be opponents. The November 3 meeting refers to the arbitration, not the qualifying statute.

Noncompliance in the nontribal areas is minimal, according to Ms. Erdman. The TRD makes a daily effort to monitor various taxing initiatives for compliance. The three things recovered from these noncompliance cases are taxes, escrow payments and penalties. Most cases are resolved without the state having to file a lawsuit.

Ms. Erdman provided additional information about the arbitration, noting that extensive discovery (e.g., depositions) had been done. Discovery ended on October 27, 2011. The case will move forward as one of the cases to be heard on April 14, 2012. The trial might last about two weeks. Dates have been set through August 2012, with trials for "state groupings" running for about two weeks. Then there is a two-week break and another trial, and so on.

The AGO hopes to get a decision on the units sold, but the panel has twice rejected briefings on the units sold issue.

Senator Garcia asked Ms. Erdman to clarify what would happen with a state case being filed. A state case would only apply to the qualifying statute, which is being determined by the economics firm. A favorable ruling from the state court might help, with a final decision by the economics firm. New Mexico is looking at the MSA and whether there are challenges.

The AGO estimates litigation costs, not including regular staff salaries, at about $300,000.

In response to a question, Ms. Erdman noted that the tobacco distributors report all sales made to the participating manufacturers (PMs), and the data required by the distributors include all sales, not just the PMs' products.

Representative Hall agreed to carry the adopted legislation if the committee members want him to do so. The members indicated they want to sign off on a prefiled bill.

Representative Picraux inquired about the status of her letter for an AG opinion, to which Mr. Fuqua responded that the AG is working on it. Representatives Picraux and Chasey indicated they want it by early January.

Minutes

Senator Garcia made a motion to adopt the minutes from the third meeting of the TSROC for the 2011 interim. The motion was seconded by Representative Chasey and passed without opposition.

Tobacco Settlement Permanent and Program Funds; Revenue Projections

Elisa Walker-Moran, chief economist for the Legislative Finance Committee, reminded the committee that the MSA revenue is unpredictable. The MSA revenue dropped in fiscal year 2011 to $38.6 million from $40.9 million in fiscal year 2010. The projection for fiscal year 2012 and the next fiscal year is $38.6 million. The program funds may be used to fund health care, research and tobacco use cessation. Beginning in fiscal year 2014, half of the tobacco settlement revenue will remain in the Tobacco Settlement Permanent Fund and will no longer be distributed to the Tobacco Settlement Program Fund. Actual revenue from the MSA is not known until April and is not distributed until the end of the fiscal year.

Review of Fiscal Year 2011 and Fiscal Year 2012 Program Funding Levels and Fiscal Year 2013 Funding Recommendations

Members of the committee discussed the funding recommendations. Ms. Knight clarified that the statutes require tobacco settlement funds to be used for health and educational purposes, and she reviewed the contents of a document containing preliminary recommendations. Currently, the statute requires that 100 percent of the tobacco revenue deposited into the Tobacco Settlement Permanent Fund be transferred to the Tobacco Settlement Program Fund for appropriation to programs.

Members expressed concern about a lack of funding for Project ECHO, and about confusion between Project ECHO and the telemedicine program. Others indicated support for continued pilot funding to the University of New Mexico (UNM) Health Sciences Center. Ms. Knight noted that UNM had requested that its funding be awarded in a lump sum to allow more budgeting flexibility, especially in light of potential revenue losses.

Due to revenue projections remaining the same as for fiscal year 2012, Representative Picraux made a motion to adopt the fiscal year 2013 recommendations as the ones outlined on the sheet. The motion was seconded by Senator Garcia and passed without opposition.

Adjournment

There being no further business before the committee, the fourth meeting of the TSROC for the 2011 interim adjourned at 12:10 p.m.

TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE (TSROC)
FY 2012 AND 2013 RECOMMENDATIONS
(thousands of dollars)

AGENCY AND PROGRAM	2012 TSROC Recs	2012 Revised OpBud	2013 TSROC Recs	2013 Proposed Change
Department of Health				
Tobacco cessation and prevention programs	6,695.3	5,682.0	5,682.0	
Diabetes prevention and control program	881.4	748.0	748.0	
HIV/AIDS services	345.2	293.0	293.0	
Breast & cervical cancer *screening* program	146.9	128.6	128.6	
Total Department of Health	**$8,068.8**	**6,851.6**	**6,851.6**	**0**
Human Services Department				
Breast & cervical cancer *treatment* program	1,500.0	1,312.4	1,312.4	
Medicaid expansion	5,175.4	7,736.1	7,907.3	
Total Human Services Department	**$6,675.4**	**9,048.5**	**9,219.7**	**see notes**
University of New Mexico				
Innovations in preventing and treating tobacco-related diseases				
Research in genomics, biocomputing & envir. health	1,215.0	979.8	see notes	
Subtotal UNM tobacco-related diseases	$1,215.0	979.8	TBD	
Other programs				
Area health education center	45.0			
Center for telehealth (formerly telemedicine)	135.0			
Los Pasos program	45.0			
Pediatric oncology	360.0	261.4		
Poison & information center	405.0	395.2		
Specialty education in pediatrics	360.0	261.4		
Specialty education in trauma	360.0	261.4	see notes	
Subtotal UNM other programs	$1,710.0	1,179.4	TBD	
Contracts and I&G				
Lung & tobacco-related disease research (LRRI contract)	1,000.0	195.0		
Funding retained by UNM (Instruction & General)	837.0	607.9	see notes	
Subtotal UNM/LRRI/I&G	1,837.0	802.9	TBD	
Total University of New Mexico	**$4,762.0**	**2,962.1**	**2,962.1**	**see notes**
Indian Affairs Department				
Tobacco cessation and prevention programs	293.8	249.3	249.3	
Total Indian Affairs Department	**$293.8**	**249.3**	**249.3**	
GRAND TOTAL - Programs	**$19,800.0**	**19,111.5**	**19,282.7**	

Allocations for FY 2012 appropriations were reduced as a result of revised tobacco settlement actual revenues. The amount paid to Medicaid was incorrectly reduced and added to the 50% of revenue diverted to additional Medicaid rather than to the Tobacco Settlement Permanent Fund. The FY 2013 recommendation corrects that error.

Appropriations to UNM are recommended as a lump sum with language to be inserted into the General Appropriation Act stating that the funds shall be expended in accordance with Section 6-4-10 NMSA 1978 for health and educational purposes.