

Tobacco Settlement Revenue Oversight Committee

2010 INTERIM REPORT



New Mexico State Legislature
Legislative Council Service
411 State Capitol
Santa Fe, New Mexico

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CONTENTS

Highlights of Recommendations and Proposed Legislation

- **Summary of 2010 Interim**
- **Section 2-19-1 NMSA 1978**
- **Fiscal Year 2012 Recommendation Spreadsheet**
- **Fiscal Year 2012 Recommendation Narrative**
- **Legislation Endorsed by the Committee**

2010 Interim Work Plan

Committee Agendas

Committee Minutes

HIGHLIGHTS OF RECOMMENDATIONS
AND
PROPOSED LEGISLATION

SUMMARY

The Tobacco Settlement Revenue Oversight Committee 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 interims "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 are provided to the Legislative Finance Committee on or before December 15 of each year.

The interim committee works closely with representatives of the New Mexico Attorney General's Office to ensure state compliance with the MSA. The attorney general is currently in arbitration with tobacco manufacturers over the state's enforcement efforts. If the state is found not to have diligently enforced its tobacco statutes in 2003, it is possible that New Mexico could be forced to pay back its entire allocable share of tobacco settlement revenue for that year (\$34 million). Tobacco manufacturers have also initiated challenges to the state's enforcement efforts in all subsequent years, making the state's total potential liability, according to the Attorney General's Office, close to \$263 million.

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 percent of the revenues are retained in the Permanent Fund and the remaining 50 percent is 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 percent distribution to the Program Fund for appropriations in fiscal years 2009 and 2010. In 2010, House Bill 79 amended the law to provide for an additional 50 percent distribution to the Program Fund for appropriation in FY 2011.

Payments received under the MSA in April 2010 totaled just under \$41 million (\$40,949,708.41), approximately \$4 million (\$3,950,300) less than projected. As a result, the agencies receiving tobacco settlement funds had to return a proportionate share (7.9 percent) of their FY 2010 appropriations. In July 2010, the Department of Finance and Administration reduced the allocations for the 2011 appropriations from the Program Fund by 10.3 percent as a result of revised tobacco settlement payment projections. If actual payments are higher than estimated, the allocations may be increased up to the lesser amount of the actual payments to the Program Fund or the appropriation.

The FY 2010 ending market value of the Permanent Fund as reported by the State Investment Council was \$132.0 million. Approximately \$39.6 million in new revenue is projected for FY 2012, affording 50 percent of that amount or \$19.8 million for distribution to

the Program Fund. The committee's recommendations were based on this projection.

After meeting four times to receive testimony from agencies and programs currently receiving appropriations, the committee adopted funding recommendations for FY 2012. The committee recommends that in FY 2012, the same programs that received funding in FY 2011 from the Program Fund be funded at original FY 2011 funding levels (before the 10.3 percent reduction in allocations), with the exception of the Medicaid program. The committee recommends a reduction in the appropriation from the Program Fund to the Medicaid program to allow other programs receiving tobacco settlement funds to receive funding in FY 2012 at original FY 2011 appropriation levels.

ARTICLE 19

Tobacco Settlement Revenue Oversight Committee

Section

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

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.

TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE (TSROC)
FY 2011 AND 2012 RECOMMENDATIONS
(thousands of dollars)

AGENCY AND PROGRAM	2011 TSROC Recs	2011 Approps H.B. 2 (a)	2012 TSROC Recs	2012 Proposed Decrease
Department of Health				
Tobacco cessation and prevention programs	9,115.0	6,695.3	6,695.3	
Diabetes prevention and control program	1,200.0	881.4	881.4	
HIV/AIDS services	470.0	345.2	345.2	
Breast & cervical cancer <i>screening</i> program	600.0	146.9	146.9	
Total Department of Health	\$11,385.0	\$8,068.8	\$8,068.8	
Human Services Department				
Breast & cervical cancer <i>treatment</i> program	1,800.0	1,500.0	1,500.0	
Medicaid expansion	6,340.0	7,655.4	5,175.4	(2,480.0)
Total Human Services Department	\$8,140.0	\$9,155.4	\$6,675.4	(\$2,480.0)
University of New Mexico				
Innovations in preventing and treating tobacco-related diseases				
Research in genomics, biocomputing & envir. Health	<u>1,500.0</u>	<u>1,215.0</u>	<u>1,215.0</u>	
Subtotal UNM tobacco-related diseases	\$1,500.0	\$1,215.0	\$1,215.0	
Other programs				
Area health education center	50.0	45.0	45.0	
Center for telehealth (formerly telemedicine)	150.0	135.0	135.0	
Los Pasos program	50.0	45.0	45.0	
Pediatric oncology	400.0	360.0	360.0	
Poison & information center	450.0	405.0	405.0	
Specialty education in pediatrics	400.0	360.0	360.0	
Specialty education in trauma	<u>400.0</u>	<u>360.0</u>	<u>360.0</u>	
Subtotal UNM other programs	\$1,900.0	\$1,710.0	\$1,710.0	
Contracts and I&G				
Lung & tobacco-related disease research (LRRRI contract)	1,250.0	1,000.0	1,000.0	
Funding retained by UNM (Instruction & General)	<u>930.0</u>	<u>837.0</u>	<u>837.0</u>	
Subtotal UNM/LRRRI/I & G	2,180.0	1,837.0	1,837.0	
Total University of New Mexico	\$5,580.0	\$4,762.0	\$4,762.0	
Indian Affairs Department				
Tobacco cessation and prevention programs	<u>500.0</u>	<u>293.8</u>	<u>293.8</u>	
Total Indian Affairs Department	\$500.0	\$293.8	\$293.8	
GRAND TOTAL - Programs	\$22,605.0	\$22,280.0	\$19,800.0	-\$2,480.0

Notes:

(a) These are the appropriations made in House Bill 2 (Laws 2010, Chapter 6, 2nd S.S. , p.v.). Allocations for FY11 appropriations were reduced 10.3% in July 2010 as a result of revised tobacco settlement payment projections. If actual payments are higher than estimated, the allocations may be increased up to the lesser amount of the actual payments to the Tobacco Settlement Program Fund or the appropriation.

TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE
FISCAL YEAR 2012 RECOMMENDATIONS

(Dollars in thousands unless otherwise noted)

Introductory Note:

The FY 2010 ending market value of the Tobacco Settlement Permanent Fund as reported by the State Investment Council was \$132.0 million. Approximately \$39.6 million in new revenue is projected for FY 2012, affording 50 percent of that amount, or \$19.8 million, for distribution to the Tobacco Settlement Program Fund. The committee's recommendations were based on this projection.

The committee recommends that in FY 2012, the same programs that received funding in FY 2011 from the Program Fund be funded at original FY 2011 funding levels, with the exception of the Medicaid program. Original FY 2011 funding levels were reduced in July 2010 by 10.3 percent as a result of revised tobacco settlement payment projections. If actual payments are higher than estimated, the allocations may be increased up to the lesser amount of the actual payments to the Program Fund or the appropriation. The committee recommends a reduction in the appropriation from the Program Fund to the Medicaid program to allow other programs receiving tobacco settlement funds to receive funding in FY 2012 at original FY 2011 appropriation levels.

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), DOH

Original FY 2011 Funding — \$6,695.3

FY 2012 Recommended Funding — \$6,695.3

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. The Centers for Disease Control and Prevention recommends spending a minimum of \$23.4 million on programs in New Mexico to reduce tobacco use significantly.

TUPAC contracts with more than 74 contractors across the state 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. 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

Original FY 2011 Funding — \$881.4

FY 2012 Recommended Funding — \$881.4

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

Original FY 2011 Funding — \$345.2

FY 2012 Recommended Funding — \$345.2

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

Original FY 2011 Funding — \$146.9

FY 2012 Recommended Funding — \$146.9

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, HSD

Original FY 2011 Funding — \$1,500.0

FY 2012 Recommended Funding — \$1,500.0

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

Original FY 2011 Funding — \$7,655.4

FY 2012 Recommended Funding — \$5,175.4

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)

Original FY 2011 Funding — \$1,215.0

FY 2012 Recommended Funding — \$1,215.0

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 Original FY 2011 Funding — \$1,710.0

Total FY 2012 Recommended Funding — \$1,710.0

A. Area Health Education Centers — \$45.0

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 — \$135.0

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 — \$45.0

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 — \$360.0

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 — \$405.0

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 — \$360.0

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 — \$360.0

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

Original FY 2011 Funding — \$1,000.0

FY 2012 Recommended Funding — \$1,000.0

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)**

Original FY 2011 Funding — \$837.0

FY 2012 Recommended Funding — \$837.0

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, IAD**

Original FY 2011 Funding — \$293.8

FY 2012 Recommended Funding — \$293.8

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 did not endorse any legislation in 2010.

2010 INTERIM WORK PLAN

**2010 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
Sen. Mary Jane M. Garcia, Co-Chair
Sen. Dede Feldman

Rep. Danice Picraux
Sen. John C. Ryan
Rep. Gloria C. Vaughn

Advisory Members

Sen. Rod Adair
Sen. Sue Wilson Beffort
Rep. Ray Begaye

Rep. Karen E. Giannini
Sen. Linda M. Lopez
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 2010 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 (MSA); compare recommended funding levels by the Centers for Disease Control and Prevention with those funded in New Mexico; and examine the implications of appropriating tobacco settlement revenue a year in advance of its receipt;

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

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

(4) evaluate the current method of making allotments from the Tobacco Settlement

Program Fund and determine whether changes are necessary to limit the impact of potential shortfalls in tobacco settlement revenue; and

(5) provide guidance and recommendations to the Government Restructuring Task Force by examining the programs overseen by the committee with an eye toward making the programs more efficient and cost-effective and by garnering and relaying feedback from state agencies on ways to increase the efficiency of those programs.

TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

2010 Approved Meeting Schedule

<u>Date</u>	<u>Location</u>
June 4	Santa Fe
July 19	Santa Fe
August 27	Santa Fe
October 25	Santa Fe

COMMITTEE AGENDAS

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

**June 4, 2010
Room 311, State Capitol
Santa Fe, New Mexico**

Friday, June 4

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

Government Restructuring Task Force Update

—Paula Tackett, Director, Legislative Council Service (LCS), or Raul Burciaga,
Director-Designate, LCS

10:15 a.m. **2010 Committee-Related Legislation and Fiscal Year 2011 Funding Levels**

—Sandy Mitchell, Staff Attorney, LCS

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

Public Comment

Adjournment

Revised: July 15, 2010

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

**July 19, 2010
Room 317, State Capitol
Santa Fe**

Monday, July 19

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

**Tobacco Litigation Update; Enforcement Issues; Tobacco Settlement
Payments Update**

—Albert Lama, Chief Deputy Attorney General, Office of the Attorney General
—Claudia Ravanelli, Special Projects Coordinator, Office of the Attorney
General

11:15 a.m. **Tobacco Settlement Revenue Payment Shortfall; Repercussions; Allotment
Methods; Proposals for the Future**

—Dannette Burch, Deputy Secretary for Budget and Policy, Department of
Finance and Administration
—Brent Earnest, Senior Fiscal Analyst, Legislative Finance Committee

12:00 noon **Lunch**

1:00 p.m. **Master Settlement Agreement Funding Issues**

—Traci Cadigan, New Mexico Government Relations Director, American
Cancer Society

1:30 p.m. **Impact of FY10 and FY11 Budget Cuts, Department of Health (DOH)
Programs**

—Robert Horwitz, Deputy Director, Public Health Division, DOH

2:00 p.m. **TUPAC (DOH) Program Report; Recommendations for Efficiency;
Epidemiological Data on Smoking; Update on Centers for Disease Control
and Prevention (CDC) Program Elements; CDC Guidance on Handling
Cutbacks to State Tobacco Cessation Programs; Spotlight on Quitline and
Youth Programs**

—Larry Elmore, Program Manager, TUPAC Program, DOH
—Shelley Mann-Lev, Santa Fe Public Schools

- 2:45 p.m. **HIV/AIDS Program Report; Recommendations for Efficiency**
—Dominick Zurlo, Program Manager, Harm Reduction Program, DOH
- 3:15 p.m. **Diabetes Program Report; Recommendations for Efficiency**
—Judith Gabriele, Program Manager, DOH
—Patty Morris, Director, Healthy Kids New Mexico Program, DOH
- 3:45 p.m. **Breast and Cervical Cancer Program Report; Recommendations for Efficiency**
—Julie Weinberg, Deputy Director, Medical Assistance Division, Human Services Department
—Gena Love, Manager, Breast and Cervical Cancer Early Detection Program, DOH
- 4:15 p.m. **Public Comment**
- 4:30 p.m. **Adjournment**

Revised: August 3, 2010

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

**August 27, 2010
Room 311, State Capitol
Santa Fe**

Friday, August 27

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

TUPAC (Indian Affairs Department (IAD)) Program Report; Response to Budget Cuts; Recommendations for Efficiency; Implementation of Cigarette Tax on Tribal Lands

—Alvin H. Warren, Secretary, IAD

11:00 a.m. **UNM Health Sciences Center Report; Response to Budget Cuts; Recommendations for Efficiency in Programs**

—Paul Roth, M.D., Executive Vice President for Health Sciences, Dean, School of Medicine, University of New Mexico (UNM)

—Richard Larson, M.D., Ph.D., Vice President for Translational Research, UNM

12:15 p.m. **Lunch**

1:30 p.m. **Lovelace Respiratory Research Institute (LRRI) Report; Recommendations for Efficiency**

—Robert W. Rubin, Ph.D., President and Chief Executive Officer, LRRI

—Yohannes Tesfaigzi, Ph.D., Director, Chronic Obstructive Pulmonary Disease Program, LRRI

2:00 p.m. **Federal Tobacco Regulations Update; Update on Cigarette Tax in New Mexico and Neighboring States; Increase in Tax on Tobacco Products Other Than Cigarettes**

—Nathan Bush, Vice President of Government Relations, American Cancer Society

3:00 p.m. **Electronic Cigarettes; Efforts to Ban Use in Public Places**

—Nathan Bush, Vice President of Government Relations, American Cancer Society

3:45 p.m. **Committee Discussion on Recommendations for Efficiency to the Government Restructuring Task Force**

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

4:30 p.m. **Adjournment**

Revised: October 13, 2010

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

**October 25, 2010
Room 311, State Capitol
Santa Fe**

Monday, October 25

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

Tobacco Settlement Permanent Fund Performance and Balances

—Vince Smith, Deputy State Investment Officer, State Investment Council (SIC)

—Charles Wollmann, Public Information Officer, SIC

10:30 a.m. **Proposed Legislation for 2011 Legislative Session**

—Albert Lama, Chief Deputy Attorney General, Office of the Attorney General

11:00 a.m. **Tobacco Settlement Permanent and Program Funds; Revenue Projections**

—Tom Clifford, Chief Economist, Legislative Finance Committee

12:00 noon **Lunch**

1:30 p.m. **Review of FY10 and FY11 Program Funding Levels and FY12 Funding
Recommendations**

Public Comment

3:30 p.m. **Adjournment**

COMMITTEE MINUTES

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

**June 4, 2010
Room 311, State Capitol**

The first meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order as a subcommittee by Representative Gail Chasey, co-chair, at 10:25 a.m. on Friday, June 4, 2010, in Room 311 of the State Capitol in Santa Fe.

Present

Rep. Gail Chasey, Co-Chair
Sen. May Jane M. Garcia, Co-Chair
Rep. Gloria C. Vaughn

Absent

Sen. Dede Feldman
Rep. Danice Picraux
Sen. John C. Ryan

Advisory Members

Sen. Sue Wilson Beffort
Rep. Ray Begaye
Rep. Karen E. Giannini
Sen. Mary Kay Papen

Sen. Rod Adair
Sen. Linda M. Lopez

Staff

Sandy Mitchell
Michael Hely
Roxanne Knight

Guests

The guest list is in the meeting file.

Handouts

Handouts and written testimony are in the meeting file.

Government Restructuring Task Force Update

Paula Tackett, director, Legislative Council Service (LCS), discussed the calendar for interim committee meetings and explained the considerations for avoiding conflicts for voting members. She mentioned that the New Mexico Legislative Council (LC) had reduced the number of committee meetings, including the number of meetings for the TSROC, which is being limited to three meeting days in addition to the organizational meeting. She stressed that the LC is discouraging committees from meeting outside of Santa Fe and that committees wishing to do so will have to provide strong justification.

The LC will review interim work plans on June 29. The LC asked that interim committees examine the programs and agencies that the committees oversee, with an eye toward identifying critical core functions and identifying cost-saving measures, and make recommendations to the Government Restructuring Task Force. Ms. Tackett said that the TSROC should concentrate on the programs that use tobacco settlement money.

Ms. Tackett reminded the TSROC of her retirement as of June 11, and she stated that Raúl E. Burciaga has been appointed as director.

Ms. Tackett was asked whether the Courts, Corrections and Justice Committee (CCJ) would be allowed to travel to continue its oversight of facilities throughout the state. Ms. Tackett stated that the CCJ may be considered to have justification to visit some facilities, especially those in Santa Fe and Albuquerque.

Representative Chasey expressed concern as to whether it is appropriate for the TSROC to make recommendations on improving the efficiency of state agencies. She suggested that it may be more appropriate for the committee to ask the state agencies that testify before the committee to provide suggestions on how to cut costs in the programs that the TSROC monitors and to relay those suggestions to the Government Restructuring Task Force. She noted that the Department of Health had reported to the co-chairs of the committee that it used federal Centers for Disease Control and Prevention guidelines to make adjustments following recent budget cuts. Ms. Tackett suggested that the TSROC could tell the task force that it has found that certain programs have taken appropriate measures in such cases.

2010 Committee-Related Legislation and Fiscal Year 2011 Funding Levels

Ms. Mitchell, staff attorney, LCS, provided a summary of legislation enacted since the committee last met in 2009. During the first special session, which met in October 2009, House Appropriations and Finance Committee Substitute for House Bills 17 and 33 was enacted to reduce fiscal year 2010 appropriations. Included in that act was a provision appropriating the balance remaining in the Tobacco Settlement Program Fund to the Human Services Department for expenditure in fiscal year 2010 for Medicaid. The TSROC, at its last meeting, had estimated the cash balance to be \$3.325 million, and the committee had included that amount in its recommendations for fiscal year 2011 appropriations.

During the regular session in January, the legislature enacted House Bill 79, which provides that, for fiscal year 2011, 100 percent of the tobacco settlement payments be distributed to the Tobacco Settlement Program Fund. 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 third fiscal year in a row that payments will be diverted from the permanent fund. The reason for this diversion is to supplant general fund appropriations and help with the overall budget situation.

During the second special session, which was held in March of this year, the legislature enacted a \$.75 per-pack increase in the cigarette tax, bringing the total tax to \$1.66 per pack. While the bill that was passed by the legislature would have increased the tax temporarily

through June 30, 2014 and would have dedicated a portion of the money to other state funds for education and youth services, the governor's vetoes made the increase permanent, put the entire increase in the general fund and repealed certain distributions to counties and municipalities so that a larger portion of the entire tax goes to the general fund. The tax increase goes into effect on July 1 of this year.

The committee was provided with a spreadsheet showing the appropriations made for fiscal year 2011 from the Tobacco Settlement Program Fund. All of the appropriations in fiscal year 2011 are less than the committee's recommendations. The actual appropriations for fiscal year 2011 are all lower than the appropriations for fiscal year 2010, except for the appropriations to the Human Services Department for Medicaid and to the University of New Mexico (UNM) for the lung and tobacco research contract with Lovelace Respiratory Research Institute (LRRI). The TSROC had recommended a \$350,000 increase in the UNM/LRRI appropriation. The final appropriation in HB 2 was a \$100,000 increase over the previous year's appropriation.

Overall, appropriations to the Department of Health are down 26.5 percent from the previous year. Appropriations to UNM are down 10 percent from the previous year, if the LRRI contract is not included. With the LRRI contract, appropriations to UNM are down 6.3 percent. The appropriation to the Indian Affairs Department is down 26.6 percent from the previous year.

The total amount appropriated for recurring programs for fiscal year 2011 is \$22,280,000. 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 during the October special session to supplement the Human Services Department's Medicaid budget. The total solvency funding is an additional \$22,280,000, bringing the total amount appropriated from the Tobacco Settlement Program Fund in fiscal year 2011 to \$44,560,000.

The General Appropriation Act of 2010 also included an appropriation of \$300,000 to the legal services program of the attorney general for tobacco litigation and arbitration costs. Ms. Mitchell explained that this money does not come out of the Tobacco Settlement Program Fund, so it is not shown on the spreadsheet provided to the committee.

Ms. Mitchell informed the committee that the Master Settlement Agreement payments received in April of this year, which go to cover fiscal year 2010 appropriations, totaled just under \$41 million (\$40,949,708.41). That amount is approximately \$4 million (\$3,950,300) less than the amount that was anticipated. As a result, the Department of Finance and Administration (DFA) has sent out an email to the agencies receiving tobacco settlement funds, advising them of the situation and of the possibility that they will need to return a proportionate share (7.9 percent) of their fiscal year 2010 appropriations. The DFA is currently exploring options for lessening the impact of any reversions. The TSROC will be hearing from the Attorney General's Office and the DFA about this issue in an upcoming meeting.

Vanessa Hawker, UNM Health Sciences Center, was asked to explain how the university is dealing with the news of the shortfall in tobacco settlement payments. Ms. Hawker said that

the university's proportionate share comes to \$401,000. She described how the university, in response to the DFA's request, is submitting a report detailing its appropriations, expenditures and encumbrances. She said that UNM is currently examining its options for dealing with the shortfall.

Ms. Knight, LCS, was asked to explain some of the history on how allotments have been made from the Tobacco Settlement Program Fund. Ms. Knight explained that the amount of the appropriations is determined each year before the tobacco settlement payments are received from the tobacco manufacturers. In the past, agencies did not receive their allotments until the end of the fiscal year, or they would receive them in monthly installments. For fiscal year 2010, the DFA allowed the entire allotment to state agencies to be made at the beginning of the fiscal year, before receipt of any tobacco settlement payments. This is the first year that the payments received were less than the amount anticipated, and now the agencies are being asked to return a portion of their appropriation (e.g., allotments). Ms. Knight commented that in the future, the DFA could reduce budgets at the beginning of the fiscal year or provide one-twelfth of the allotments each month to better manage any future revenue shortfalls.

Ms. Hawker was asked whether UNM will be affected by a decreased disproportionate share in hospital and indigent money. Ms. Hawker was not prepared to describe all of the effects of funding changes for the UNM Health Sciences Center, but she did say that the university has some concerns in that regard.

David Hadwiger, DFA, was asked whether there is a time line for the 7.9 percent reversion. He said the DFA is attempting to resolve the issue by the end of June 2010. Mr. Hadwiger said he thought it would be helpful if the agencies appearing before the committee would discuss how they would react to different methods of receiving allotments in the future.

2010 Interim Work Plan and Meeting Schedule Development

Ms. Mitchell reviewed the proposed work plan with the committee. Representative Chasey requested that the item concerning the Government Restructuring Task Force be modified to specify that the TSROC will ask agencies appearing before the committee to address the issue and make recommendations. Representative Chasey also requested that an item be added to the work plan concerning a review of how allotments are made from the Tobacco Settlement Program Fund.

The committee also discussed agenda items for upcoming meetings, including a ban on e-cigarettes in public places and a tax increase on tobacco products other than cigarettes. Senator Garcia and Representative Chasey expressed interest in hearing about the youth programs operated under the tobacco prevention and cessation program of the Department of Health.

At 11:10 a.m., Senator Beffort was appointed by the president pro tempore as a voting member for the purposes of this meeting only.

On a motion by Representative Vaughn, seconded by Representative Chasey, the committee approved the proposed work plan with changes.

The committee adjourned at 11:15 a.m.

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

**July 19, 2010
Room 317, State Capitol
Santa Fe**

The Tobacco Settlement Revenue Oversight Committee (TSROC) began the meeting as a subcommittee at 10:20 a.m on Monday, July 19, 2010, in Room 317 of the State Capitol. The chair announced the commencement of webcasting and what that entails. A quorum was achieved at 10:30 a.m.

Present

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

Absent

Rep. Gloria C. Vaughn

Advisory Members

Sen. Rod Adair
Rep. Ray Begaye
Sen. Linda M. Lopez
Sen. Mary Kay Papen

Sen. Sue Wilson Beffort
Rep. Karen E. Giannini

Staff

Sandy Mitchell
Roxanne Knight
Michael Hely

Guests

The guest list is in the meeting file.

Handouts

Copies of handouts and written testimony are in the meeting file.

Monday, July 19

Tobacco Litigation Update; Enforcement Issues; Tobacco Settlement Payments Update
—**Albert Lama, Chief Deputy Attorney General, Attorney General's Office (AGO)**
—**Claudia Ravanelli, Special Projects Coordinator, AGO**

In March 2010, then-Deputy Attorney General David Thomson sent a letter to the Legislative Finance Committee (LFC) and members of the TSROC regarding the projected amount of revenues for this fiscal year. The AGO is using data from the National Association of

Attorneys General. Price Waterhouse-Cooper assisted with figures for the estimate, which is a little over \$45 million. In 2009, there was a \$45 million contribution in tobacco settlement funds (TSF). At the same time, New Mexico had not received information as to whether any of those manufacturers that signed on to the Master Settlement Agreement (MSA) — known as participating manufacturers (PMs), would be withholding any amounts.

From March through May 2010, the TSF calculations for FY2010 were adjusted, and reductions were made to the TSF amount. The actual payment was \$4 million less than estimated.

Thirteen PMs made part of their payments into a "dispute account". Some withheld payments.

Future payments: The TSROC asked for guidance on how to account properly for TSF in the future. The AGO recommended that the same process that is already in effect be used: a gross amount estimate from an audit done in accordance with the MSA, subject to authorized deductions in accordance with the MSA. During the arbitration process, New Mexico will continue to see significant deductions from gross receipts, assuming full withholding. New Mexico's total allocable share is a net \$38 million, which is a conservative estimate.

Arbitration: The AGO is currently engaged in preparatory meetings for a scheduling conference to be held on July 20, 2010 in Chicago. The preparations are for the ongoing litigation, regarding 2003 TSF, that was filed by PMs against MSA states. The arbitrators have been selected. The AGO has been working on the briefs it will file. In September, a substantive hearing with initial statements of claims will take place. In order to streamline the process as much as possible, New Mexico is participating in hiring a lead counsel to represent the state defendants in the PMs lawsuit. The lead counsel will be charged with presenting common issues for all of these states. For issues unique to New Mexico, the AGO has three staff attorneys working with Ms. Ravanelli on the state's individual statement of claims.

Discovery: Tobacco sales documents from 2003 are being prepared for disclosure. There is an issue with the disclosure of New Mexico's tax information in discovery, in that certain data are confidential according to state law. The AGO is currently working on discovery agreements and a possible limited release of that information.

Settlement: There is the potential for settlement at any time. The AGO is prepared to move the case through the arbitration process.

Questions and comments were raised on the following matters:

- In response to a question regarding how many arbitrators are arbitrating in this matter, how they are selected and from what areas of the United States, it was explained that the arbitrators comprise a three-member panel chosen according to the MSA selection provisions from a pool of retired federal Article 3 judges. Each side

- chooses an arbitrator, and both agree on a third. The arbitrators come from California, Illinois and Pennsylvania.
- A clarification as to who are the plaintiffs and who are the defendants in the TSF lawsuit: PMs are plaintiffs, and there are 49 state defendants, excluding only Montana.
 - A clarification regarding discovery issues: AGO staff explained that regardless of agreement per disclosure, state law creates a confidentiality requirement that imposes penalties regardless of the circumstance of disclosure. The AGO may have to get a New Mexico court order authorizing release for arbitration purposes. Seventy-five percent of discovery comes from information from tobacco distributors, which is filed monthly and redacted in accordance with state law. Approximately 20 percent of this information consists of market reports from nonparticipating tobacco manufacturers (NPMs). Barbara Vigil, New Mexico district court judge, will decide what disclosures, if any, are permitted. If no such tax disclosures are permitted, the burden of proof may be more difficult to meet. The AGO believes that the plaintiffs, not the states, have the burden to prove that states are not compliant with the MSA.
 - Possible settlement terms: There could be an MSA amendment providing for changes in how settling states deal with the competitive advantage between PMs and NPMs. There may also be an agreement that states will legislate other changes to tobacco laws and regulations in accordance with any settlement terms.
 - Regarding lead counsel: The AGO staff clarified that two lawyers from Washington, D.C., would be chosen and given limits on expenditures. They would be limited to representing issues common to the states that they represent.

Litigation Update; Status on PMs, NPMs and Distributors; How Federal and State Legislation Has Affected New Mexico

—Claudia Ravanelli, Special Projects Coordinator, Office of the Attorney General

Ms. Ravanelli testified that in October 2009, the AGO filed a lawsuit against MRC Enterprises in the First Judicial District. MRC Enterprises is a tobacco distributor licensed in New Mexico. The AGO is alleging that MRC Enterprises has dealt extensively in contraband sales, with \$185 million sticks of contraband sold without payment of state taxes.

MRC Enterprises was indicted in Washington State for trafficking in cigarette contraband and money laundering. The Washington State case tracks New Mexico's facts.

On a matter involving "Company SS", the AGO is still completing an investigation and will report later.

In addition, one native wholesale distributor from the foreign trade zone in Nevada was breaking the law. After Nevada provided documentation, the AGO filed a civil case against the malfeasant distributor. A recent Oklahoma Supreme Court opinion proved helpful, and New Mexico won. As a result of enforcement of the judgment, this company's distribution in New Mexico has been severely curtailed.

The AGO has 13 judgments currently pending against manufacturers, totaling \$1.8 million in damages. These judgments are for the most part uncollectible. Some states are banding together to pool resources to collect money from manufacturers, such as overseas manufacturers that dumped contraband in New Mexico. On these overseas operations, it is especially difficult to attach assets when collecting on judgments.

There has been an indictment in the matter of Isleta Native Wholesale Supply. A responsible party has pled guilty to money laundering and trafficking and is currently serving a prison sentence.

In another case, the AGO sued six manufacturers and retailers pursuant to federal Food and Drug Administration (FDA) regulations banning flavored cigarettes. Both sides prevailed partly, and both are appealing.

The AGO's web site, www.nmag.gov, provides comprehensive information on the MSA, prohibitions, banned brands, distributor information and pending litigation.

As of June 23, 2010, 11 NPMs are certified in New Mexico, and 202 brands that are 100 percent compliant are currently certified in New Mexico.

The market share in 2009 of PMs in New Mexico represented 1.5 billion sticks, with 25 percent of the share being tax-exempt.

On June 22, 2009, the federal Family Smoking Prevention and Tobacco Control Act went into effect. New Mexico found that it had to take action to certify PMs in compliance with FDA regulations. New Mexico has been able to reduce sales of 20 brand families that have been removed from the AGO's directory. The AGO will have to certify annually that its enforcement is in compliance with FDA regulations.

On July 1, 2009, Senate Bill 219 went into effect, which has helped a great deal by allowing New Mexico to enforce laws against foreign manufacturers. New Mexico is now able to assess an escrow payment on every cigarette stamped in the state. In the first half of 2009, a total of 155 million sticks were reported, with four million eligible for escrow, representing \$109,000 in payments. During the second half of 2009, after SB 219's effective date, 146 million sticks were reported, and the amount of escrow payments rose to \$3.8 million. In the first quarter of 2010, \$1.9 million has been collected.

The local NPMs have seen no decrease in market share.

On January 1, 2010, fire-safe cigarette legislation went into effect. The AGO has met with fire marshals in the state. Now, every tobacco manufacturer has to provide proof of fire-safe certification.

The federal Prevent All Cigarette Trafficking Act of 2009 (PACT) affects all internet distributors of tobacco. According to the PACT, all distributors are regulated in each state where

they are selling tobacco products. The PACT helps to limit the increasing number of rogue distributors that use the false guise of tribal sovereignty to escape regulation.

The AGO is 100 percent compliant on escrow collections.

Regarding the impact of House Bill 3 from the 2010 second special session as it affects SB 219, the AGO has sent a letter to TSROC members. Changes pursuant to HB 3 have been made. In 2009, SB 219 was modified to change the definition of "units sold". In 2010, HB 3 modified that provision by amending Section 7-12-5 NMSA 1978. The AGO sees potential for a significant decrease in the state's ability to collect escrow. NPMs and PMs are concerned about this.

Questions and comments from the committee include the following:

- Regarding the common lead counsel for the majority of participating states in the 2003 TSF arbitration/litigation, the lead counsel is to be concentrated solely on the arbitration case. In response to a question regarding how much New Mexico is paying the lead counsel, it was explained that there is a \$2 million cap for all 49 states together, and the total cost depends upon how much the lead counsel's services are used. The total cost to New Mexico is estimated to be less than \$50,000. The AGO uses in-house resources as much as possible. Ms. Ravanelli is a national expert in this field.

By a motion seconded and adopted, the minutes for the June 2010 TSROC meeting were approved.

Tobacco Settlement Revenue Payment Shortfall; Repercussions; Allotment Methods; Proposals for the Future

—**Dannette Burch, Deputy Secretary for Budget and Policy, Department of Finance and Administration (DFA)**

—**Brent Earnest, Senior Fiscal Analyst, LFC**

For FY2010, the actual MSA payment to New Mexico was \$4 million less than originally estimated. The law requires the DFA to reduce appropriations accordingly. There was a 7.9 percent reduction in appropriations across programs.

Questions and comments from the committee included the following:

- In response to a question about how state agencies allocate legislative funding, it was explained that DFA budgets are made in accordance with the general appropriation act. So long as agencies follow those guidelines, the DFA finds them compliant. When the legislature earmarks funds, an agency must supply reports to relevant committees. If funds are allocated by category, then this is monitored. The DFA only monitors the compliance per level of specificity in the general appropriation act.
- Much of TSF goes to the University of New Mexico (UNM). Under instruction and general (I&G) purpose and area health education centers, there are allocations. It was

suggested that \$837,000 be removed from UNM's funding because UNM can get funds elsewhere. Perhaps this money should go to areas most underserved by tobacco cessation programs. The DFA does not make these decisions. Appropriations are made by the legislature. The DFA only reduces allocations proportionately when there is a shortfall. The opinion was expressed that I&G funds should come from the state's general fund.

- TSROC funding for Medicaid is considered nonrecurring, except for \$8 million that has been recurring.
- For LFC and DFA analysis, growth in education, Medicaid, prison populations and health care costs are the most compelling drivers. It was explained that the LFC and DFA will examine cost drivers and that finding means replacing all of the nonrecurring sources that have to be replaced or cut will be a big challenge.
- Before 2003, the DFA collected TSF in April and distributed the funds in the subsequent fiscal year. When TSF were diverted from the permanent fund, the DFA began running a negative balance through April of each year. Approved deductions and unforeseen matters, such as one manufacturer's default, are important risks. The committee pondered how to return to the previous system in which TSF were accounted for only after receipt. It was suggested that general fund appropriations be used to fill in for one year of TSF appropriations. Or, the TSROC could choose to skip one year of TSF appropriations or skip the permanent fund distribution for one year. The likelihood of these alternatives was discussed as well.
- There was discussion on using a one-twelfth draw-down allotment to fund programs and agencies rather than a block disbursement at the beginning of the fiscal year.

MSA Funding Issues

—Traci Cadigan, New Mexico Government Relations Director, American Cancer Society

- Among youth, smoking is down, but smokeless tobacco use has increased.
- There has been a 26.5 percent reduction in tobacco prevention funding.
- Increases in the cigarette tax are often followed by increases in industry marketing to make up for the fact that young smokers are price-sensitive.

In response to a question as to how increases in smoking incidence among youth are determined, Larry Elmore, program manager for the Tobacco Use Prevention and Control Program (TUPAC), explained that the federal Centers for Disease Control and Prevention (CDC) does a nationwide telephone-based survey of tobacco use rates among youth. One of the questions is whether the respondent has used any tobacco within the last 30 days.

Impact of FY2010 and FY2011 Budget Cuts, Department of Health (DOH) Programs

—Robert Horwitz, Deputy Director, Public Health Division, DOH

—Mr. Elmore, Program Manger, TUPAC, DOH

The DFA announced an unexpected cut of 7.9 percent in TSF revenues for FY2010. Sixty-seven TUPAC contracts terminated two weeks early. No cuts are expected to HIV/AIDS clinical care and breast and cervical cancer clinical care services. The DOH shifted some diabetes program funding to state general fund sources. The DOH is holding 10 percent in abeyance for FY2011, and it used one-time revenues to make up for funds. It will be difficult to

identify additional savings during FY2011. The DOH is still 4 percent short of its target in reductions of TSF fund use.

TUPAC reviewed all activities in all contracts, contractor performance histories, contractor applications and capacity. TUPAC eliminated a significant number of contracts and cut funding in many contracts. It looked at statewide funding to ensure geographic coverage throughout the state.

Tobacco marketing is like a "persistent parasitic infection" of which prevention has to remain a step ahead.

Questions and comments from the committee included the following:

- Regarding tobacco use among mentally ill individuals, one of TUPAC's goals is to address tobacco-related disparities, including the disparate use of tobacco among mentally ill individuals. Individuals who start smoking in their teens are also found to be predisposed to a greater incidence of depression. Nicotine helps decrease anxiety and delusions among individuals with schizophrenia, but nicotine patches and gum may reduce the harm of smoking.
- There have been significant pharmacological advances in treating depression and schizophrenia, but the panel stated that it was unaware of any substitutes for tobacco.

TUPAC Program Report; Recommendations for Efficiency; Epidemiological Data on Smoking; Update on CDC Program Elements; CDC Guidance on Handling Cutbacks to State Tobacco Cessation Programs; Spotlight on Quit Line and Youth Programs

—Larry Elmore, Program Manger, TUPAC, DOH

—Shelley A. Mann-Lev, M.P.H., Santa Fe Public Schools (SFPS)

Mr. Elmore reported that 17.9 percent of adult New Mexicans use tobacco. U.S. adult smoking rates increased slightly to 20.6 percent, or about 46 million people, in 2008 from 19.8 percent in 2007. This represents the first increase in the adult smoking rate since 1994.

Insurers are offering quit lines with health plans that they offer.

Sixty-two percent of quit line callers had incomes lower than 25 percent of the federal poverty level.

Secondary benefits to tobacco cessation include fewer missed work days and secondary hospitalizations.

Prevention Coordinator and Project Director for Tobacco-Free Schools and TUPAC contractor, Ms. Mann-Lev spoke to the committee. She said that 15 percent fewer youth have started smoking, which, she said, is not an insignificant figure. SFPS has been working with youth to encourage cessation and prevent tobacco use because marketing is heavily directed at youth. Nicotine addiction usually starts before the age of 20, and most adults who smoke started before the age of 20. Smoking before age 13 is much more likely to lead to serious health

consequences. Addiction can occur by smoking between three and 20 cigarettes, and the tobacco industry designs products to addict people. According to Ms. Mann-Lev, school policy is a critical piece of tobacco prevention and cessation. She said that schools need to create norms, that tobacco use is not acceptable. Ten years ago, schools decided their tobacco policies were not important enough to enforce them. Now, SFPS has smoke-free campuses, and SFPS wants to ensure that the prohibition is enforced by conducting extensive outreach and diversion among youth. Life skills and evidence-based curricula are implemented to teach about tobacco and resistance to tobacco. SPFS teaches youth self-regulation, socialization and conflict management to help them avoid tobacco.

Questions and comments from the committee included the following:

- Funds often take a long time to get to tobacco diversion programs, and this is a challenge.
- There was a discussion of studies showing that the human brain does not fully develop until people are in their twenties or as late as 30. Smoking has an impact on brain functioning.

HIV/AIDS Program Report; Recommendations for Efficiency

—Dominick Zurlo, Program Manager, Harm Reduction Program, DOH

The HIV/AIDS services programs at the DOH will use federal and other program revenues to offset TSF reductions. Federal funds include funds pursuant to the federal Ryan White Comprehensive AIDS Resources Emergency Act, and federal Health Resources and Services Administration (HRSA) funds are among the federal funds the DOH receives for these services. These are for direct services for HIV/AIDS that total \$4 million. The CDC provides \$1 million. Harm reduction, syringe exchange programs, etc., are not funded by any federal funds.

The funds are allocated through a variety of contracts for prevention, testing and partner services for those who test positive for HIV/AIDS. The DOH allocates these services geographically according to where population centers are and aims to fund prevention in rural areas. The DOH must have a sense of how many people are living with HIV/AIDS in the state and their locations throughout the state. DOH makes provider agreements based on the numbers in specific areas. Funding is proportionate to the number of people needing services, but the DOH will provide the TSROC with figures at a later meeting.

Diabetes Program Report; Recommendations for Efficiency

—Judith Gabriele, Program Manager, DOH

—Patty Morris, Director, Healthy Kids New Mexico Program, DOH

This presentation concerned budget cuts from FY2010 and FY2011. According to the presenters, it will take several years to catch up after budget cuts from FY2010 and FY2011. The DOH takes a coordinated approach to children's health. In FY2010, it provided children's health funding in 31 schools; in FY2011, it provided this funding to only 20 schools.

There have been cuts to programs helping people with diabetes in self-management, including the Kitchen Creations cooking school. The DOH aims to have one such program in every county every year. This is not likely to occur in FY2011 due to budget cuts.

Educational campaigns have been cut. There is no radio campaign, and the DOH has interrupted distribution of the instructional Spanish-language *photonovelas* (comic-book-style narratives) that have proven to be effective. The pre-diabetes prevention campaign has been cut as well. The DOH has been unable to translate the CDC's national diabetes education program into a culturally appropriate New Mexico-specific program.

Professional development for providers has been greatly reduced. In FY2010, the DOH trained 1,000 providers in motivational interviewing on pre-diabetes. It provided two online training sessions regarding diabetes and depression and diabetes and smoking. In FY2011, the DOH is mostly focusing on online trainings but may be able to do one live training. These trainings may reach 700 professionals. Other reductions are listed on page 10 of the handout.

The DOH recommends continuing collaboration with TUPAC and other programs at the DOH and other agencies and community-based organizations. Utah, Arizona, Colorado and New Mexico are working together on such programs by increasing the use of technology and using online training and public education. The DOH is hiring a health educator/tribal liaison to work with New Mexico's Native American population and to address the disproportionate number of Native Americans affected by diabetes.

According to Ms. Morris, \$200,000 in TSF were used for the healthy kids/healthy communities program started in fall 2007 in Las Cruces. The program has been running for two and one-half years. It has been identified as one of the country's 10 best obesity prevention programs. It is now found in Chaves County as well as the places listed on page 11 of the DOH handout. The DOH wants to expand this program to McKinley County, to more tribal communities and to border areas, but cuts will not allow this now. In Las Cruces, discussions are underway to allow different populations to use recreational facilities; roads are designated for multiple uses; fruits and vegetables have been promoted in schools; there is a safe routes to school program to facilitate walking.

Questions and comments from the committee included the following:

- Regarding efforts in the Navajo Nation, the initial strategy is to raise awareness regarding diabetes and cardiovascular disease in step with a movement in the Navajo Nation to raise awareness of secondhand smoke dangers. The DOH is working with a number of groups in the Navajo Nation and with other tribes, nations, pueblos and reservations, using the Special Diabetes Project and tribal diabetes programs.
- There was a discussion of an "enormous increase" in the incidence of diabetes and diabetes services in the Navajo Nation. Some of this is attributed to the western diet. People do not see a correlation with diabetes, smoking, chewing tobacco and even alcohol use. Historical traumas are still having an impact. Motivational interviewing is in-person, and the telemedicine program has reached a lot of Native American

providers. The DOH is concerned about the funding of a program that has been very helpful.

- Regarding telehealth, there will be three online trainings on diabetes and depression; diabetes and smoking; and pre-diabetes during FY2011. UNM's successful telemedicine program, Project ECHO, may be used for motivational interviewing. The DOH's budget for online training has not been cut.

Breast and Cervical Cancer Program Report; Recommendations for Efficiency
—Gena Love, Manager, Breast and Cervical Cancer Early Detection Program, DOH
—Julie Weinberg, Deputy Director, Medical Assistance Division, Human Services
Department (HSD)

The DOH's breast and cervical cancer (BCC) screening program provides the sole access to the HSD's Medicaid Program for breast and cervical cancer. The Medicaid benefits provided are full Medicaid benefits and are not limited to cancer-related services. Cuts to this DOH program will likely mean that women will not be screened and thus not be eligible for the HSD Medicaid program. The DOH will integrate staff and resources between colorectal and BCC screening programs.

Ms. Weinberg said that program expenses have decreased recently. The HSD is unsure as to why this has occurred, except for the possibility that provider reimbursement reductions have produced this effect. The HSD is considering other cost-containment measures, including provider reimbursement methodologies and tighter pharmacy management.

Public Comment

Mr. Horwitz contended that the one-twelfth allotment works well for the DFA but not from an appropriation perspective. One-twelfth installment funding would make planning difficult.

There being no further business, the committee adjourned at 4:00 p.m.

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

**August 27, 2010
Room 311, State Capitol
Santa Fe**

The third meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order as a subcommittee on Friday, August 27, 2010, at 10:10 a.m. in Room 311 of the State Capitol in Santa Fe. The co-chair announced that the meeting was being webcast.

Present

Rep. Gail Chasey, Co-Chair
Sen. Dede Feldman
Rep. Danice Picraux
Rep. Gloria C. Vaughn

Absent

Sen. Mary Jane M. Garcia, Co-Chair
Sen. John C. Ryan

Advisory Members

Sen. Rod Adair
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Sen. Linda M. Lopez

Rep. Karen E. Giannini
Sen. Mary Kay Papen

Staff

Sandy Mitchell
Roxanne Knight
Karen Wells

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Friday, August 27

Indian Affairs Department (IAD) Tobacco Use Prevention and Control (TUPAC) Program Report; Response to Budget Cuts; Recommendations for Efficiency; Implementation of Cigarette Tax on Tribal Lands

Alvin H. Warren, secretary of Indian affairs, described the overall goals of the cessation and prevention of commercial tobacco abuse programs within the IAD, emphasizing the impact on youths and the promotion of the cultural awareness of traditional and ceremonial uses of tobacco among Native Americans. The programs are conducted with a contracted provider to conduct reporting, monitoring and other administrative activities. Statistics were provided regarding the

prevalence of commercial tobacco use among Native American adults and youths. Secretary Warren summarized the funding for these programs, noting that reductions in tobacco funding were offset by funding from the IAD. All of the funds that were appropriated were used by grantees in 2010. He highlighted how the funds were used, including the number of people served and the nature of the programs offered by grantees. Grantees included the Albuquerque Indian Center, the Pueblos of Isleta, Laguna, Pojoaque, Santa Clara and Tesuque, the Oso Vista Ranch Project and Tohatchi (District 14) of the Navajo Nation. Youths from the Pueblo of Santa Clara program who were in the audience were recognized. A survey of tribal youths in 16 New Mexico tribes conducted in 2010 revealed that almost one-half of respondents lack an understanding of the importance of traditional tobacco; however, nearly 20% of respondents have tried commercial cigarettes, and they report that 30% of their friends smoke. Close to 50% of respondents said that at least one immediate family member smokes. The IAD sponsored a meeting on August 18, 2010 to present best practices in the area of prevention and cessation for Native Americans. Secretary Warren identified ongoing challenges, which include a lack of awareness of available resources as well as reimbursement and funding difficulties. He identified the allocation of funding for FY 2011.

Before going to questions from the committee, the co-chair asked committee members to introduce themselves. Staff was also introduced. The Santa Clara youths were invited to comment. Hannah Johnson noted the importance of the program. Other audience members were invited to make comments. Margaret Merrill, executive director, Oso Vista Ranch Project, Joseph M. Talachy, lieutenant governor, Pueblo of Pojoaque, and Marissa Sward-Hinds, tobacco cessation coordinator, Pueblo of Tesuque, offered supportive comments regarding the tribal tobacco cessation and prevention programs. Clarice Tafoya, coordinator of the Pueblo of Santa Clara Pueblo program, reported on the long-term impact of the program on the youths, including an observation that very reserved youths are finding a voice by speaking publicly regarding the potential harm from tobacco use.

Committee members asked questions and made comments in the following areas:

- appreciation for the efforts of the IAD to continue to fund these programs despite the loss of tobacco funding;
- an observation that continued smoking in casinos is a topic that may need to be addressed;
- whether the programs are collecting data consistent with TUPAC and Department of Health goals. Human resources do not support full alignment of data collection; however, an abbreviated activity report has been developed to outline the TUPAC goals; and
- whether there has been a decline in commercial advertising; the Oso Vista Ranch Project has reported a reduction in commercial sales of tobacco.

Secretary Warren continued his presentation by acknowledging the great value of the support of Representative Begaye in promoting all of these programs. Secretary Warren spoke of the impact of the implementation of cigarette tax on tribal lands and noted that the IAD is not the agency responsible for implementation of this tax. The information provided was obtained from the Taxation and Revenue Department (TRD). The TRD reviewed the ordinances that tribes submitted to determine which tribes would be eligible to receive cigarette tax credit stamps and identified 21 entities that were eligible. Each tribe, as a sovereign government, determines its own process for licensing retailers.

Committee members made comments and asked questions in the following areas:

- the difference between the New Mexico cigarette tax and federal cigarette tax; Secretary Warren did not have that information; and
- whether the statutory \$.75 add-on tax is being collected by tribes that have an ordinance in place; representatives of the Pueblo of Isleta, the Pueblo of Pojoaque, the Pueblo of Acoma and the lobbyist for several tribes and pueblos testified that they are all collecting the tax.

A quorum being present, the minutes of the July meeting were approved following a motion by Senator Feldman that was seconded by Representative Vaughn.

University of New Mexico Health Sciences Center (UNM/HSC) Report; Response to Budget Cuts; Recommendations for Efficiency in Programs

Dr. Paul Roth, M.D., executive vice president for health sciences, dean, UNM school of Medicine, identified patient care, education and research programs that have critical needs at the UNM/HSC. Originally, only biomedical research was identified for support with tobacco settlement funds; however, over time, other needed health-related programs have also been funded. He reviewed the funding history, which has grown since 2001 to a current funding level of \$3,375,620. He emphasized that the UNM/HSC has managed reductions in funding but further cuts may result in substantial reductions in services.

Dr. Richard Larson, M.D., Ph.D., vice president for relational research, UNM, provided more detail regarding the effect of reductions, efficiencies and modifications that the UNM/HSC has implemented, the benefit of each program and the implication of future cuts. Cuts have resulted in reduced federal funding of clinical and research positions, as well as reduced recruitment of health care professionals in rural areas and an increase in the overall cost of health care in New Mexico. He identified the important programs supported by tobacco settlement funds, including research and public service projects such as biomedical research, the poison and drug information center, Los Pasos (a program of early intervention to young children at risk of developmental delays), area health education centers (AHECs), telehealth and the pediatric oncology program. Some tobacco funds were committed to replace instruction and general funds, specifically to support specialty education in pediatric trauma. The effect of cuts in the 2010 tobacco settlement funds has had a tremendous multiplier effect. He identified a loss of \$7.00 for every \$1.00 of reduced allocation, which translates into a combined loss of \$960,000 in

federal funding. He identified the funding of pilot projects as the main source of federal matching funds. The ability of the UNM/HSC to leverage tobacco settlement funds with federal matching funds has resulted in a significant creation of jobs, development of new technologies and the introduction of clinical and intervention drug trials. Further reductions will lead to a reduction of services, further loss of federal funds, loss of jobs and compromises to the clinical, research and education mission of the UNM/HSC. Dr. Larson urged the committee to provide fiscal flexibility in the budget to allow the UNM/HSC to determine the best way to deal with future reductions.

Committee members had questions and made comments in the following areas:

- the impact on the UNM Hospital due to Medicaid cuts; Dr. Roth estimates an impact of approximately \$35 million so far, which has resulted in the implementation of greater efficiency of management and administration;
- an observation that the increased cigarette tax was not earmarked to health care;
- a need to identify the specific impact of anticipated future Medicaid cuts prior to the next legislative session; this impact is being developed and communicated to Kathryn "Katie" Falls, secretary of human services; Dr. Roth is especially concerned about the potential elimination of the State Coverage Initiative (SCI) Program, upon which UNM depends;
- whether residency programs in rural areas serving Navajos will be affected by the cuts, and whether collaborative partnerships offer promise in dealing with cuts; Dr. Larson indicated that there are no duplications in educational efforts as UNM is the only medical school in the state. Dr. Roth believes there is no clinical duplication because the need always exceeds the availability of providers; however, he will communicate with providers in San Juan County to ensure effective partnerships;
- whether reductions in tobacco funding affect the actual teaching of medical students; the answer was yes, research projects formerly conducted by medical students have been limited;
- the extent to which further reductions would impact the number of medical students; the number of students who graduate will not change;
- how the UNM/HSC is positioned to respond to the effects of the federal Patient Protection and Affordable Care Act (PPACA), especially regarding access to care. The impact of the PPACA will be huge, but the UNM/HSC is not prepared to meet that impact at all. The PPACA contains many opportunities, and the UNM/HSC will pursue all to which it may qualify; however, the major growth of residents who will qualify for health insurance will have an enormous impact on the state and on the UNM/HSC;

- clarification regarding jobs lost due to the loss of tobacco funds; the loss of federal matching funds could result in the loss of full-time-equivalent positions or a substantial reduction in salaries due to the loss of a project;
- clarification about exactly how many jobs have been lost due to reductions in state tobacco settlement funds; it was noted that all components had a general fund component and that it is difficult to isolate the effect of the tobacco funds; cuts exacerbate the job losses;
- clarification regarding the anticipated reduction of the recruitment of health care professionals to rural and underserved areas; reductions are due to cuts to AHECs, rural residency opportunities and the inability of receiving entities to accommodate these professionals;
- the impact of the possible elimination of the SCI by 2014, and the opportunity, through the PPACA, to create an alternative program to serve these populations; there was an invitation to the UNM/HSC to assist in the development of a substitute SCI program;
- the potential of PPACA provisions that enable the expansion of Medicaid to childless adults sooner than 2014 to cover SCI enrollees; a logical transition is needed from SCI coverage to a potentially new model in 2014;
- a request for a summary of suggestions of opportunities for meaningful cuts in programs; and
- an observation that the TSROC has the opportunity to make suggestions to the Government Restructuring Task Force (GRTF) regarding health reform opportunities.

Lovelace Respiratory Research Institute (LRRI) Report; Recommendations for Efficiency

Dr. Robert W. Rubin, Ph.D., president and chief executive officer, LRRI, provided a historical perspective regarding research on tobacco products and the history of the LRRI, which is the only private basic-science, biomedical research organization totally dedicated to the study of respiratory diseases. He highlighted the revenue for the institute's work provided by tobacco settlement funds, noting the increases since 2000. These funds have contributed to progressive growth jobs, including more than 2,500 jobs in 2010 alone.

Dr. Yohannes Tesfaigzi, Ph.D., director, Chronic Obstructive Pulmonary Disease (COPD) Program, LRRI, reviewed the accomplishments of the LRRI over the last 10 years. For example, one study found that people exposed to wood smoke have a six-fold chance of developing COPD. The studies conducted have had a significant effect on the scientific community as a whole and have led to more research. Another study revealed that individuals with COPD have a four-fold chance of developing lung cancer. The LRRI has developed a sputum test that allows very early detection of lung cancers, 75% of which were identified by LRRI biomarkers. Studies are ongoing to identify interactions between Hispanic and non-

Hispanic white ethnicities and those at risk for COPD. Other current and pending federal grants beyond tobacco settlement funds in support of these and other activities were identified, as well as recent publications resulting from funding.

Committee members had questions and comments in the following areas:

- the amount received in tobacco settlement funds this year was \$897,000; it was noted that the allocation from the TSROC was \$1 million; Bob Barberousse, a lobbyist, clarified that the amount was cut back pursuant to general, across-the-board budget cuts;
- clarification regarding oversight of the state funds received; the LRRF is overseen by UNM;
- a request for the presenters to provide any additional recommendations for further efficiencies to the GRTF and for information regarding jobs lost as a result of cuts; and
- whether and what amount of tax revenues could be lost as a result of cuts; Dr. Rubin will work on developing those figures.

Federal Tobacco Regulations Update; Update on Cigarette Tax in New Mexico and Neighboring States; Increase in Tax on Tobacco Products Other Than Cigarettes

Nathan Bush, vice president for government relations, American Cancer Society, described the impact of new federal Food and Drug Administration (FDA) regulations that call for larger, stronger warning labels on smokeless tobacco products; no vending machine sales except in adult-only facilities; no branded tie-ins such as shirts; no sales of cigarettes in packages of less than 20; and no free samples. The regulations went into effect during the summer. He highlighted the position of New Mexico in the ranking of state cigarette tax rates relative to other states by noting that New Mexico now has the nineteenth-highest rate in the country at \$1.66 per pack of cigarettes. He noted that it is widely recognized that the price of cigarettes is the most dominant deterrent to smoking.

Mr. Bush presented information on taxation of non-cigarette tobacco products. New Mexico's current tax code allows for a tax of 25% of the value of non-cigarette tobacco products. The American Cancer Society and other health-based partners prefer a tax based on price (or value), which New Mexico has, rather than a weight-based tax, as exists elsewhere. The New Mexico tax on non-cigarette tobacco products, however, has not been raised in close to 20 years. He noted that smokeless tobacco products are not covered by the new FDA regulations, which could lead to an increase in the use of non-cigarette tobacco products. Additionally, smokeless tobacco products frequently are flavored and serve as entry-level products to tobacco use. Larry Elmore, program manager, TUPAC, Department of Health, stated that non-cigarette tobacco products are the next major focus for the department. Mr. Bush provided a handout that demonstrates that a tax increase of 25% on non-cigarette tobacco products would be needed to create tax equity between tobacco and non-cigarette tobacco products in New Mexico. A

clarification was sought regarding the point at which the tax would be assessed and the ultimate impact on smoking cessation. Mr. Bush stated the tax should be assessed at the point of sale, which would result in a higher sticker price, thereby possibly deterring the purchase. Clarification was sought regarding the estimated \$6.8 million in revenues from a tax such as this. Mr. Bush noted that the estimate was affirmed by the TRD and upheld by American Cancer Society models for projecting the impact on usage as a result of such a tax. He emphasized disturbing trends in usage among youths of non-cigarette tobacco products. Overall, New Mexico saw nearly a 12% increase in usage among youths in 2009. The products smell and taste like candy, but they are very high in nicotine.

Committee members had comments and questions in the following areas:

- clarification regarding the law that generated the new FDA regulations, and the impact the law may have on business; the law does not allow the removal of a product from the market;
- a suggestion from the co-chair that the Legislative Finance Committee be notified that tax revenue equity legislation would generate \$6.8 million in revenue; and
- an observation that because of the flavoring, youths can easily disguise their use of non-cigarette tobacco products while at school.

Electronic Cigarettes; Efforts to Ban Use in Public Places

Mr. Bush described an electronic cigarette, or e-cigarette, which is a battery-powered device that contains a cannister of nicotine in a vaporized solution. Use of e-cigarettes resembles use of a nicotine inhaler. Although costly, e-cigarettes are attractive and are selling rapidly. Some look like cigarettes, but some look like ballpoint pens, which makes them easy to conceal in school. E-cigarettes have not been reviewed, tested or approved by the federal government. The FDA, in limited testing, supports that e-cigarettes are potentially cancer-producing and are not regulated. There is no scientific evidence that e-cigarettes are useful in quitting smoking. Though the FDA has sought to bar importation of this product, at least one federal judge has said that the FDA cannot block importation of these products. The American Cancer Society and its national health partners are united in supporting regulation of these products as drug-delivery devices. Mr. Bush suggested that the state could prohibit all sales of these products until they are approved by the FDA. Additionally, Mr. Bush is advocating for regulations that define these products as drug-delivery devices, which is different than how tobacco products are defined.

Committee members had questions and comments in the following areas:

- an observation regarding the difficulty of quitting smoking and the strong desire of smokers to have devices and products to help them to quit;
- the impact of secondhand smoke, the cost of smoking to taxpayers and the need to promote this information more widely;

- whether a vehicle such as the Dee Johnson Clean Indoor Air Act could be used to limit the sale of this product; Mr. Bush will provide model language; and
- a request that opponents of legislation to limit the sale of e-cigarettes be identified.

Committee Discussion on Recommendations for Efficiency to the GRTF

The co-chair drew the committee's attention to a handout containing suggested efficiency recommendations to be brought to the GRTF. Ms. Mitchell noted that these suggestions were discussed at previous meetings and include enhanced collaboration combined with comprehensive review and performance evaluation, increased use of online training, teleconferencing and videoconferencing and more efficient use of existing resources. Representative Chasey suggested the committee get more guidance on the proper expenditure of tobacco settlement revenues so that expenditures are not appropriated in excess of revenues. She also recommended that the committee, in conjunction with the affected departments, develop a matrix of recommendations. Representative Chasey further suggested that staff work with the Department of Health, UNM and other partners to identify the proper columns, including resources needed, supportive documentation and recommendations. Committee members commented that it appears that cost-containment and true consolidation ideas are not emerging in the GRTF. It was recognized that health care is an especially difficult area in which to make deep cuts. It was acknowledged that the interim committees have greater knowledge of the programs and should offer real recommendations. It was noted that the TSROC may not play a major role in this effort. It will be necessary to estimate the savings that could be achieved through any efficiency or consolidation measures. A suggestion was offered that recommendations also include a request that no additional cuts be made to programs that are deemed vital to health care or job creation. It was noted that an outside audit may be necessary to fully evaluate the impact of consolidation and that a professional mediator may be needed to assist in decision-making. Many complex factors are at play and cannot easily be resolved. It was noted that the TSROC's role is more in determining program effectiveness, and it has no role in oversight of programs. At the same time, the TSROC can serve as a vehicle for communicating the thoughtful ideas of the departments as they are expressed. The scope of what needs to be done is much larger than what can be accomplished by any suggestions offered by this committee. A question was raised about the multiplicity of programs that the TSROC funds that are located in the Department of Health that have been affected by budget cuts. Mr. Elmore noted that many of these programs are within the Public Health Division of the Department of Health, which sustained major cuts. Cuts were accomplished through contracts such as federal contracts with the Centers for Disease Control and Prevention. Core positions have been retained, but two positions, so far, were lost in the TUPAC Program.

There being no further business, the meeting was adjourned at 4:05 p.m.

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

**October 25, 2010
State Capitol, Room 311
Santa Fe**

The fourth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order on Monday, October 25, 2010, at 10:15 a.m. in Room 311 of the State Capitol in Santa Fe. Committee members and staff introduced themselves. The co-chair announced that the meeting was being webcast.

Present

Rep. Gail Chasey, Co-Chair
Sen. Dede Feldman
Sen. John C. Ryan
Rep. Gloria C. Vaughn

Absent

Sen. Mary Jane M. Garcia, Co-Chair
Rep. Danice Picraux

Advisory Members

Rep. Ray Begaye
Sen. Linda M. Lopez
Sen. Mary Kay Papen

Sen. Rod Adair
Sen. Sue Wilson Beffort
Rep. Karen E. Giannini

Staff

Sandy Mitchell
Roxanne Knight
Karen Wells

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Monday, October 25

Tobacco Settlement Permanent Fund Performance and Balances

Steve Moise, state investment officer, Vince Smith, deputy state investment officer, and Charles Wollman, public information officer, State Investment Council (SIC), provided an update on the status of the Tobacco Settlement Permanent Fund. Mr. Moise began by identifying changes that have taken place in the SIC due to a legislatively required audit. New governance provisions and structures have been implemented, the investment policy has been

updated and investment allocation procedures have been revised. Through the work of a nationally recognized executive search firm, very high-quality applicants were generated for the position of chief investment officer. Mr. Smith, the number one choice of the search committee, was selected and will assume the position of chief investment officer.

Mr. Wollman provided current information regarding the Tobacco Settlement Permanent Fund. The fund was created in May 2000 with a market value of \$49.0 million; as of August 2010, the fund was valued at \$137.8 million. Mr. Moise identified the contributions, distributions and returns since the fund's inception. By statute, the fund is to be invested "as the land grant permanent fund". Previously, the fund was conservatively managed, and a high percentage was maintained as a cash balance. Although this approach protected the fund during the recent economic downturn, the fund has not benefited from the recent recovery. Over the last five years, distributions from the fund averaged \$33.1 million per year. From 2003 to 2006, all funds were distributed to tobacco programs; since 2006, 50% of the funds have been retained in the permanent fund. Mr. Wollman stated that the fund is not yet self-sustaining. In order to maintain recent program fund distribution, the fund would need \$700 million in assets.

Mr. Smith reviewed the allocation of the assets of the fund into investments. The long-term benchmark allocation represents an aggressive investment strategy. Returns, on average, have shown modest growth despite recent losses.

Representative Chasey reviewed New Mexico's history of the Tobacco Settlement Permanent Fund and annual contributions to the fund. It was noted that tobacco companies that experience losses due to the settlement due to a state's inability to manage the funds are able to request a reduction in the required payments. Due to the innate instability of the fund, New Mexico decided to invest a portion of tobacco contributions into a permanent fund to ensure long-term protection for programs that rely on distributions from this fund. Representative Chasey noted that the committee is expecting that as the economy improves and the state's reliance on these funds for such programs as Medicaid is reduced, a percentage of the contributions once again will be made to the permanent fund and not distributed to programs. She also noted that the state is currently involved in federal arbitration regarding the state's management of the funds.

Questions from committee members addressed the long-term effect on investments of changes in the political environment. Mr. Smith noted that the SIC is basing investment decisions on conservative treasury bond experience. Mr. Moise noted that New Mexico is engaged in legal action to recover some funds lost due to questionable investment practices. An observation was made that the investments should be looked at over a longer period of time than the annual budget. Clarification was sought regarding the reforms to the SIC that were adopted during the last legislative session and whether they have been successful. Mr. Moise noted that the SIC is preparing some proposed legislation to be introduced in the 2011 session.

Representative Chasey reviewed several enclosures in members' packets, including a matrix that reflects input from agencies and presenters before the TSROC regarding potential agency efficiencies for presentation to the Government Restructuring Task Force (GRTF). She

also reviewed a draft of a letter that was prepared in response to a request from Senator Beffort encouraging the federal Food and Drug Administration (FDA) to focus equal attention on smokeless tobacco products as is being given to tobacco products. Input on the matrix and letter was sought from committee members; however, the co-chair did not feel a formal vote was necessary. Representative Begaye commented that Native American students are disproportionately affected by tobacco use and should be shielded from cuts and efficiencies proposed by the Department of Health (DOH). Larry Elmore, program manager for the Tobacco Use Prevention and Control (TUPAC) program, provided clarification regarding the process for determining budget cuts at the DOH. The department sought recommendations from the Centers for Disease Control and Prevention (CDC) and changed funding priorities based on the CDC input. Some DOH contracts were discontinued based on that; others were discontinued based on an internal, systematic evaluation of the successes and accomplishments of funded contracts. Contractors whose funds were cut were told the reason for the cut. As new requests for proposals are issued, guidelines for performance and continued funding will be clearly specified. A question was asked about enforcement of anti-smoking policies at public schools, including the use of e-cigarettes and heroin. Mr. Elmore noted that a DOH youth resiliency survey report reflects a reduction in smoking among high school students but does not specifically report on increased heroin use or smokeless tobacco use.

Proposed Legislation for 2011 Legislative Session

Claudia Ravanelli, tobacco specialist, and Nan Erdman, assistant attorney general, Office of the Attorney General (OAG), provided background information about the impact of nonparticipating manufacturers on the Master Settlement Agreement (MSA). Ms. Erdman stated that due to the exemption of tobacco products sold on tribal lands, New Mexico did not collect escrow on these products. Manufacturers are now contending that New Mexico is out of compliance with the MSA and demonstrated a lack of diligence because the state did not collect escrow on these products. The OAG strongly disagrees and is defending its position through ongoing arbitration. A 2009 bill established a tax-credit stamp for the purpose of determining products subject to the escrow collections. The bill, which became law in July 2010, contained an error, which the OAG is seeking to correct. A draft bill was presented that includes cigarette packs stamped with tax-credit stamps in the definition of "units sold" for the purpose of determining escrow payments. Elements of the MSA were described, including inflation, nonparticipating manufacturer adjustments and market share loss of participating manufacturers due to these adjustments. Following the identification of these elements, an economic firm makes an independent assessment and determination regarding the causes for market losses and whether the state enacted legislation to address this. These factors affect whether participating manufacturers will receive a downward adjustment in any given year. If the error in the 2010 bill is not corrected, New Mexico could lose between \$4 million and \$12 million per year in the amount received through the MSA.

Ms. Erdman provided a report on the status of the process of arbitration. Three former federal judges have been selected to serve on the New Mexico panel, and hearings have been taking place in Chicago. Agreements have been reached on rules to apply to the process. Significant legal issues have been submitted to tobacco lawyers. Responses are awaited.

Ms. Ravanelli reported on work being done by the OAG regarding e-cigarette sales and distributions. The issue is being closely followed by the OAG, with California taking the lead of regulating these non-tobacco products.

Joe Thompson, lobbyist, Native Trading Association, respectfully disagreed that a drafting error occurred, contending that no change to the law is needed. In his view, New Mexico's law complies with the MSA requirement for qualifying legislation, and amending the law would raise the risk of enacting legislation when nothing has been done that is wrong. Drew Setter, lobbyist for a number of Native American tribes, commented that legal review of the proposed bill is underway.

Questions and comments by committee members addressed the following areas:

- whether an arbitration settlement option is imminent; no;
- clarification regarding the process of identification regarding collecting escrow; the manufacturers are required to identify products that are sold in New Mexico that are subject to the tobacco escrow payments;
- complications that arise with the Navajo Nation due to the tri-state nature of the tribe;
- whether other states facing this issue are facing similar problems; most other states with Native American tribes require the collection of an excise tax;
- whether a bill such as the one proposed would draw attention to New Mexico's noncompliance with the MSA; failure to implement this law would not imply that New Mexico is not in compliance with the MSA; it strengthens New Mexico's position in arbitration;
- clarification regarding the estimate that New Mexico could lose \$4 million to \$12 million annually without this legislative fix; it is based on anticipated market share loss;
- whether the issue addressed by the proposed legislation is currently part of the arbitration that is underway; no, it puts New Mexico in a stronger position to have an escrow account; and
- a suggestion that the OAG, the Legislative Finance Committee (LFC), the Taxation and Revenue Department (TRD) and the tribes all need to be at the table discussing the proposed bill to determine whether this bill should be supported.

Tobacco Settlement Permanent and Program Funds; Revenue Projections

Tom Clifford, chief economist, LFC, offered background information on the MSA revenues. The LFC estimates that the fund lost close to \$8 million between FY09 and FY10. Mr. Clifford's forecast reflects the following factors: a base payment, plus a 3% inflation factor, plus a volume adjustment of 4%, minus the anticipated loss of market share by participating manufacturers and minus the nonparticipating manufacturers' withholding of \$4.3 million per year due to their belief that New Mexico is not meeting the terms of the MSA. Based on these components, the net revenue is expected to be \$40 million for FY11 and \$39.6 million for FY12. Mr. Clifford commented on the OAG's belief that further reductions in escrow payments will occur unless the current statute is amended. The TRD does not believe that the statute as currently written will have a material effect on revenues. He noted that the language in the statute does not align with the MSA with regard to "tax exempt stamps". Lobbyists for the

nonparticipating manufacturers have testified that the inclusion of that language was intentional. More analysis is needed and the fiscal and revenue projections should be updated before the general fund projections in December are presented.

A question was asked about which figures will be potentially affected by the proposed amendment to the statute. The importance of reconciling differing opinions was stressed. The original intent of the 2010 law was to enhance tax revenues with the creation of tax-credit stamps, and this intent should not be lost. A question was asked about the possible propriety of waiting a year before taking any action, allowing time for the differences to be resolved and to evaluate the impact of the statute in its current form.

Public Comment

Nathan Bush, American Cancer Society, suggested that the tobacco companies be asked how they project their contributions, how they estimate downward adjustments and what their strategies are for withholding funds for purposes of the MSA. The co-chair suggested that Mr. Clifford and Mr. Bush consult about the type of information that should be sought from the tobacco companies.

Review of FY10 and FY11 Program Funding Levels and FY12 Funding Recommendations

Ms. Mitchell, staff attorney, Legislative Council Service (LCS), reviewed a spreadsheet reflecting recommendations and appropriations for tobacco settlement funds in FY10 and FY11, including reductions and final appropriations. In FY10, the final appropriations were reduced by 7.9%, and in FY11, the total funds were reduced by 10.3%. Amounts requested of the TSROC were reflected on the chart. An additional chart shows a retrospective history of funding from FY99 to the present. The Tobacco Settlement Permanent Fund currently has a balance of \$134,011,700. Clarifications were sought between the charts prepared by the LCS and the information provided by the SIC and the LFC. The co-chair suggested that the figures reflect a need to increase funding for TUPAC, which has lost significant funding in the last two years. Mr. Elmore noted that the DOH eliminated 20 TUPAC contractors altogether and the remainder were cut. Committee members discussed the agency requests and the known need for additional Medicaid funding that exceeds the request of the Human Services Department (HSD). Clarification was sought regarding the requests from the University of New Mexico Health Sciences Center and its desire for additional flexibility in allocating appropriated funds where needed. A suggestion was made to at least identify the programs by name that are to be funded with the money so that important programs are not lost. Clarification was sought regarding whether the funding requests represent the total needs of an agency; no, the request is just a part of the total need. The co-chair suggested that the Medicaid expansion should be higher than what the HSD requested, but the total should be determined by what is left over after funding the other agency requests. Final adjustments should reflect all the 2011 appropriations to the agency, plus an additional amount for Medicaid beyond the HSD request. It was recognized that, ultimately, the LFC will make the determination about what amounts are appropriated to what programs. A committee consensus was reached.

The co-chair invited Bob Barberousse, lobbyist for Lovelace, to comment on concerns regarding citations assessed on Lovelace for use of animals in research. He will provide additional information to the committee.

Representative Chasey asked committee members whether they had any additional feedback on the matrix of recommendations for the GRTF and the letter to the FDA. She requested that Ms. Mitchell date the matrix of recommendations with clarifying information regarding the DOH and submit it to the GRTF.

Public Comment

Mr. Bush noted that materials he submitted to the committee with funding requests were one year off; they should indicate FY12 instead of FY11. He highlighted that the TSROC has done a great job; however, there remains a great need for more emphasis on tobacco reduction programs.

The co-chair recognized and thanked Representative Vaughn for her participation and work, as she will not be returning to the legislature next year. Committee members thanked the co-chair and the staff for their work during the interim.

There being no further business, the committee adjourned at 2:35 p.m.