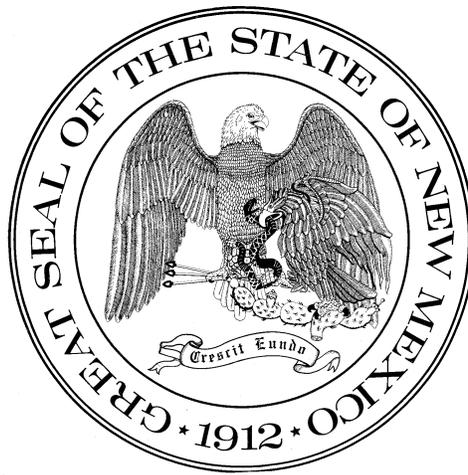


# Tobacco Settlement Revenue Oversight Committee

## 2013 INTERIM REPORT



### **New Mexico State Legislature**

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

December 2013

[www.nmlegis.gov](http://www.nmlegis.gov)

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## Background

On November 23, 1998, the attorneys general of 46 states entered into a Master Settlement Agreement (MSA) with the four largest tobacco companies in the United States: Brown & Williamson; Lorillard; Philip Morris; and R.J. Reynolds (participating manufacturers). Under the terms of the agreement, the participating manufacturers agreed to prohibitions and restrictions on the marketing and advertising of their tobacco products and to compensate the states for costs associated with tobacco-related illness and disease attributed to the participating manufacturers' products. In turn, the states agreed to enact model legislation, or a similar qualifying statute, to charge tobacco manufacturers that did not participate in the MSA an escrow payment and to diligently enforce such laws. Later, an additional 50 tobacco companies joined the MSA. Beginning in 1999, New Mexico has passed various MSA-related legislation.

The Tobacco Settlement Revenue Oversight Committee (TSROC) was created in 2000 as a joint interim legislative committee to monitor the use of revenues received as a result of the MSA. The committee meets during the interim to evaluate programs that receive appropriations from tobacco settlement revenues. Each year, the TSROC takes testimony regarding the performance of funded programs and makes recommendations for future funding. Funding recommendations for fiscal year 2015 were provided to the Legislative Finance Committee on December 11, 2013 by Senator Cisco McSorley, the committee co-chair.

In 1999, the Tobacco Settlement Permanent Fund (permanent fund), consisting of money distributed to the state pursuant to the MSA, was created. In 2000, the Tobacco Settlement Program Fund (program fund), consisting of distributions from the permanent fund, was established. Appropriations are made from the program fund for health and education purposes. The Department of Health, the Human Services Department (Medicaid has received the bulk of appropriations from MSA revenues) and the University of New Mexico Health Sciences Center have historically been the primary recipients of such appropriations.

Beginning in fiscal year 2001, the distribution to the program fund from the permanent fund was limited to 50% of the MSA settlement funds received by the state in the preceding fiscal year, until such time as that amount is less than 4.7% of the average of the year-end market values of the permanent fund for the preceding five years. The remaining 50% was to be retained in the permanent fund. In 2003, legislation made the permanent fund a reserve fund of the state that could be expended, under certain circumstances, to avoid an unconstitutional deficit. At various times since, other legislation has allowed for distributions from the permanent fund to the general fund or for additional distributions to the program fund. In most of the fiscal years since the creation of the permanent fund (including fiscal year 2014), amounts equal to the total annual MSA settlement payment have been appropriated, with no increase to the corpus of the permanent fund.

## TSROC Recommended Fiscal Year 2015 Appropriations

For fiscal years 2012 through 2015, MSA revenues have been or are projected to be essentially flat, hovering around \$39 million. MSA revenue for fiscal year 2015 is projected to be \$39.5 million. As of October 31, 2013, the balance in the permanent fund was \$184,193,836. By November 30, 2013, the fund balance is projected to be approximately \$186 million.

The Office of the Attorney General (OAG) regularly reports to the TSROC regarding enforcement of, and compliance with, the MSA. An arbitration proceeding challenging the state's diligent enforcement efforts for calendar year 2003 was concluded earlier this year, with a ruling against the state on this issue. Among factors supporting the panel's finding of "an overall culture of non-compliance" were: 1) missing or poor documentation by the state relating to required reporting by nonparticipating manufacturers (NPMs); 2) the state's failure to sue noncompliant NPMs; 3) the state's lack of a plan or guidelines to collect data from NPMs or to educate NPMs as to their reporting obligations; 4) lack of funding and personnel dedicated to enforcement; 5) increased 2003 sales over those of previous years by a noncompliant NPM; 6) failure on the state's part to sufficiently and timely publicize complementary legislation or to notify distributors of new legislation; 7) the state's failure to make use of the Cigarette Enforcement Act to seize noncompliant foreign cigarettes; 8) lack of documentation demonstrating enforcement actions such as seizures, injunctions, settlement efforts or regulations as supplementary enforcement tools; and 9) lack of documentation showing participation in, follow-up on or sharing of information from the National Association of Attorneys General's tobacco project, which was formed to assist states in MSA enforcement. The OAG advised the committee that the adjustment resulting from this arbitration award will be deducted from the next annual MSA payment due to the state in spring 2014; the amount of the adjustment has not yet been determined, but is estimated at between \$12 million and \$24 million.

The OAG has advised the TSROC that the recent arbitration decision for calendar year 2003 appears to obviate the need for legislation amending the definition of "units sold" to include both "tax-exempt" and "tax-credit" stamps for the purposes of determining escrow payments of cigarette manufacturers that are not participating in the MSA. In prior years, such legislation was passed (but vetoed) to "remove ambiguity under current law about which sales are subject to escrow payment and to ensure equalization of treatment of participating and nonparticipating manufacturers". The OAG interprets the lack of specific findings on this issue to mean that the arbitration panel agreed with the state's position that tribal sales are not, and have never been, subject to escrow.

According to the OAG, the participating manufacturers are pursuing diligent enforcement challenges against New Mexico for years succeeding 2003. A different panel of arbitrators will hear future proceedings. Further, the findings of the calendar year 2003 arbitration panel are not binding on future panels. There is also uncertainty regarding when such future arbitration proceedings and resulting findings are likely to occur. Accordingly, while it is possible that the state could be facing future adverse diligent enforcement determinations, the OAG does not expect a resulting reduction in future annual MSA payments to occur every year.

After meeting five times to receive testimony from agencies and programs currently receiving appropriations, and after being advised of the recent MSA arbitration award, the committee adopted funding recommendations for fiscal year 2015. The committee's recommendations for fiscal year 2015 are the same as those for fiscal year 2014. A copy of the fiscal year 2015 recommendations is attached.

### Endorsed Legislation

E-cigarettes are devices that use a heating element to atomize liquid resulting in aerosolized vapor that is inhaled into the lungs, with the practice called "vaping". According to committee presentations, the liquid may contain nicotine as well as other toxic substances such as heavy metals, propylene glycol and volatile organic compounds. The nicotine, if any, may or may not be derived from tobacco. There is limited data regarding the short- or long-term safety of these devices. There are no standards by which these products must be manufactured or labeled. While it appears that the federal Food and Drug Administration (FDA) is likely to regulate e-cigarettes as nicotine delivery devices, they are not currently subject to FDA regulations or regulations in New Mexico.

Experts appearing before the committee presented evidence that e-cigarettes are being marketed to youth and the use of e-cigarettes among middle and high school students more than doubled between 2010 and 2011. The committee has endorsed a bill to include e-cigarettes under the current Tobacco Products Act, which would then prohibit the sale, including the online internet sale, of e-cigarettes to minors. A copy of the discussion draft is attached.

**TOBACCO SETTLEMENT OVERSIGHT  
COMMITTEE FISCAL YEAR 2015  
RECOMMENDATIONS**

**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE (TSROC)**  
**FY2015 RECOMMENDATIONS**  
(thousands of dollars)

| AGENCY AND PROGRAM   | 2014<br>TSPrgm Fund<br>HB2 | % of half<br>of MSA<br>Payment | 2015<br>TSROC<br>Recommendations |
|--|----------------------------|--------------------------------|----------------------------------|
| <b>Department of Health</b>  |                            |                                |                                  |
| Tobacco cessation and prevention programs                              | \$5,682.00                 | 29.467%                        | \$5,682.00                       |
| Diabetes prevention and control program                                | \$748.00                   | 3.879%                         | \$748.00                         |
| HIV/AIDS services  | \$293.00                   | 1.519%                         | \$293.00                         |
| Breast & cervical cancer <i>screening</i> program                      | \$128.60                   | 0.667%                         | \$128.60                         |
| <b>Total Department of Health</b>                                      | <b>\$6,851.60</b>          | <b>35.532%</b>                 | <b>\$6,851.60</b>                |
| <b>Human Services Department</b>                                       |                            |                                |                                  |
| Breast & cervical cancer <i>treatment</i> program                      | \$1,312.40                 | 6.806%                         | \$1,312.40                       |
| Medicaid   | \$7,907.30                 | 41.007%                        | \$7,907.30                       |
| Medicaid - Solvency; Diversion of 50% fr. TS PermFund                  |                            |                                |                                  |
| <b>Total Human Services Department</b>                                 | <b>\$9,219.70</b>          | <b>47.813%</b>                 | <b>\$9,219.70</b>                |
| <b>University of New Mexico</b>  |                            |                                |                                  |
| <b>Innovations in preventing and treating tobacco-related diseases</b> |                            |                                |                                  |
| Research in genomics, biocomputing & envir. Health                     | \$979.80                   | 5.081%                         | \$979.80                         |
| Subtotal UNM tobacco-related diseases                                  | \$979.80                   | 5.081%                         | \$979.80                         |
| <b>Other programs</b>  |                            |                                |                                  |
| Area Health Education Center   | \$0.00                     | 0.000%                         | \$0.00                           |
| Center for telehealth (formerly telemedicine)                          | \$0.00                     | 0.000%                         | \$0.00                           |
| Los Pasos program  | \$0.00                     | 0.000%                         | \$0.00                           |
| Pediatric oncology   | \$261.40                   | 1.356%                         | \$261.40                         |
| Poison & Information Center  | \$590.20                   | 3.061%                         | \$590.20                         |
| Specialty education in pediatrics                                      | \$261.40                   | 1.356%                         | \$261.40                         |
| Specialty education in trauma  | \$261.40                   | 1.356%                         | \$261.40                         |
| Subtotal UNM other programs  | \$1,374.40                 | 7.128%                         | \$1,374.40                       |
| Lung/tobacco research contract (LRRI)                                  | \$0.00                     |                                |                                  |
| Funding retained by UNM (Instruction & General)                        | \$607.90                   | 3.153%                         | \$607.90                         |
| Subtotal UNM Contracts/I & G   | \$607.90                   | 3.153%                         | \$607.90                         |
| <b>Total University of New Mexico</b>                                  | <b>\$2,962.10</b>          | <b>15.361%</b>                 | <b>\$2,962.10</b>                |
| <b>Indian Affairs Department</b>                                       |                            |                                |                                  |
| Tobacco cessation and prevention programs                              | \$249.30                   | 1.293%                         | \$249.30                         |
| <b>Total Indian Affairs Department</b>                                 | <b>\$249.30</b>            | <b>1.293%</b>                  | <b>\$249.30</b>                  |
| <b>GRAND TOTAL</b>   | <b>\$19,282.70 (a)</b>     | <b>100.000%</b>                | <b>\$19,282.70</b>               |

(a) Represents 50% of MSA annual payment that is distributed to TSPrg Fund.

**LEGISLATION ENDORSED BY THE COMMITTEE**

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HOUSE BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC HEALTH; AMENDING THE TOBACCO PRODUCTS ACT TO CHANGE THE TITLE OF THE ACT TO THE "TOBACCO PRODUCTS AND E-CIGARETTE ACT", TO PROHIBIT SALES OF E-CIGARETTES TO MINORS AND TO PROHIBIT THE ONLINE INTERNET SALE OF E-CIGARETTES TO A MINOR IN NEW MEXICO.

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

SECTION 1. Section 30-49-1 NMSA 1978 (being Laws 1993, Chapter 244, Section 1) is amended to read:

"30-49-1. SHORT TITLE.--~~[This act]~~ Chapter 30, Article 49 NMSA 1978 may be cited as the "Tobacco Products and E-Cigarette Act"."

SECTION 2. Section 30-49-2 NMSA 1978 (being Laws 1993, Chapter 244, Section 2) is amended to read:

"30-49-2. ~~[DEFINITION]~~ DEFINITIONS.--As used in the .195129.1

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 Tobacco Products and E-Cigarette Act:

2 A. "e-cigarette":

3 (1) means any electronic oral device, whether  
4 composed of a heating element and battery or an electronic  
5 circuit, that provides a vapor of nicotine or any other  
6 substances the use or inhalation of which simulates smoking;  
7 and

8 (2) includes any such device, or any part  
9 thereof, whether manufactured, distributed, marketed or sold as  
10 an e-cigarette, e-cigar, e-pipe or any other product, name or  
11 descriptor; and

12 B. "minor" means an individual who is less than  
13 eighteen years of age."

14 SECTION 3. Section 30-49-3 NMSA 1978 (being Laws 1993,  
15 Chapter 244, Section 3) is amended to read:

16 "30-49-3. TOBACCO AND E-CIGARETTE--PROHIBITED SALES.--

17 A. No person shall knowingly sell, offer to sell,  
18 barter or give [~~any~~] a tobacco product or an e-cigarette to  
19 [~~any~~] a minor.

20 B. No minor shall procure or attempt to procure any  
21 tobacco products or e-cigarette for [~~his~~] the minor's own use  
22 or for use by [~~any other~~] another minor.

23 C. No person shall sell, offer to sell or deliver a  
24 tobacco product or an e-cigarette in a form other than an  
25 original factory-sealed package."

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underscored material = new  
[bracketed material] = delete

1           SECTION 4. Section 30-49-5 NMSA 1978 (being Laws 1993,  
2 Chapter 244, Section 5) is amended to read:

3           "30-49-5. REFUSAL TO SELL TOBACCO PRODUCTS OR  
4 E-CIGARETTES TO PERSON UNABLE TO PRODUCE IDENTITY CARD.--[~~Any~~]  
5 A person selling goods at retail or wholesale may refuse to  
6 sell tobacco products or e-cigarettes to [~~any~~] a person who is  
7 unable to produce an identity card as evidence that [~~he~~] the  
8 person is eighteen years of age or over."

9           SECTION 5. Section 30-49-6 NMSA 1978 (being Laws 1993,  
10 Chapter 244, Section 6) is amended to read:

11           "30-49-6. PRESENTING FALSE EVIDENCE OF AGE OR IDENTITY.--  
12 No minor shall present any written, printed or photostatic  
13 evidence of age or identity that is false for the purpose of  
14 procuring or attempting to procure any tobacco products or e-  
15 cigarettes."

16           SECTION 6. Section 30-49-7 NMSA 1978 (being Laws 1993,  
17 Chapter 244, Section 7, as amended) is amended to read:

18           "30-49-7. VENDING MACHINES--RESTRICTIONS ON SALES OF  
19 TOBACCO PRODUCTS AND E-CIGARETTES.--

20           A. Except as provided in Subsections B and C of  
21 this section:

22                   (1) a person shall not sell tobacco products  
23 or e-cigarettes at a retail location in New Mexico by any means  
24 other than a direct, face-to-face exchange between the customer  
25 and the seller or the seller's employee; and

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underscored material = new  
[bracketed material] = delete

1 (2) a person selling goods at a retail  
2 location in New Mexico shall not use a self-service display for  
3 tobacco products or e-cigarettes. As used in this subsection,  
4 "self-service display" means a display to which the public has  
5 access without the assistance of the seller or the seller's  
6 employee.

7 B. Tobacco products or e-cigarettes may be sold by  
8 vending machines in the following locations only:

9 (1) in locations not held open to the public,  
10 including controlled areas within factories, businesses and  
11 offices;

12 (2) in locations in which the vending machine  
13 is equipped with a remote-controlled lock-out device; or

14 (3) in age-controlled locations where minors  
15 are not permitted unless accompanied by a parent or guardian.

16 C. The provisions of this section do not apply to  
17 written, telephonic or electronic sales of tobacco products.

18 D. The online internet sale of e-cigarettes to a  
19 minor in New Mexico is prohibited."

20 SECTION 7. Section 30-49-8 NMSA 1978 (being Laws 1993,  
21 Chapter 244, Section 8) is amended to read:

22 "30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS OR E-  
23 CIGARETTES AS FREE SAMPLES PROHIBITED--EXCEPTION.--

24 A. A person who sells, distributes, promotes or  
25 advertises tobacco products or e-cigarettes shall not provide

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underscored material = new  
[bracketed material] = delete

1 free samples of tobacco products or e-cigarettes to a minor.

2 B. The provisions of Subsection A of this section  
3 shall not apply to an individual who provides free samples of  
4 tobacco products to a family member or to an acquaintance on  
5 private property not held open to the public."

6 SECTION 8. Section 30-49-9 NMSA 1978 (being Laws 1993,  
7 Chapter 244, Section 9) is amended to read:

8 "30-49-9. SIGNS--POINT OF SALE.--A person, firm,  
9 corporation, partnership or other entity engaged in the sale at  
10 retail of tobacco products or e-cigarettes shall prominently  
11 display in the place where tobacco products or e-cigarettes are  
12 sold and where a tobacco product or e-cigarette vending machine  
13 is located a printed sign or decal that reads as follows:

14 "A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A  
15 TOBACCO PRODUCT OR E-CIGARETTE IS SUBJECT TO A FINE OF UP TO  
16 \$1,000.

17 A PERSON WHO SELLS A TOBACCO PRODUCT OR E-CIGARETTE TO A  
18 PERSON LESS THAN 18 YEARS OF AGE IS SUBJECT TO A FINE OF UP TO  
19 \$1,000."."

20 SECTION 9. Section 30-49-10 NMSA 1978 (being Laws 1993,  
21 Chapter 244, Section 10) is amended to read:

22 "30-49-10. MONITORED COMPLIANCE--INSPECTIONS.--The  
23 alcohol and gaming division of the regulation and licensing  
24 department and the appropriate law enforcement authorities in  
25 each county and municipality shall conduct random, unannounced

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underscored material = new  
[bracketed material] = delete

1 inspections of facilities where tobacco products or e-  
2 cigarettes are sold to ensure compliance with the provisions of  
3 the Tobacco Products and E-Cigarette Act."

4 SECTION 10. Section 30-49-11 NMSA 1978 (being Laws 1993,  
5 Chapter 244, Section 11) is amended to read:

6 "30-49-11. PREEMPTION.--When a municipality or county  
7 adopts an ordinance or a regulation pertaining to sales of  
8 tobacco products or e-cigarettes, the ordinance or regulation  
9 shall be consistent with the provisions of the Tobacco Products  
10 and E-Cigarette Act."

11 SECTION 11. Section 30-49-12 NMSA 1978 (being Laws 1993,  
12 Chapter 244, Section 12) is amended to read:

13 "30-49-12. PENALTY.--

14 A. Any person who violates any provision of  
15 Subsection A of Section [~~3 or Sections 5, 7, 8 or 9 of the~~  
16 ~~Tobacco Products Act~~] 30-49-3 NMSA 1978 or Section 30-49-7,  
17 30-49-8 or 30-49-9 NMSA 1978 is guilty of a misdemeanor and  
18 shall be sentenced pursuant to the provisions of Section  
19 31-19-1 NMSA 1978. Each violation is a separate and distinct  
20 offense.

21 B. Any minor who violates any provision of  
22 Subsection B of Section [~~3 or Section 6 of the Tobacco Products~~  
23 ~~Act~~] 30-49-3 NMSA 1978 or Section 30-49-6 NMSA 1978 shall be  
24 punished by a fine not to exceed one hundred dollars (\$100) or  
25 forty-eight hours of community service."

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# **2013 INTERIM WORK PLAN**

**2013 APPROVED  
WORK PLAN AND MEETING SCHEDULE  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**Members**

Sen. Cisco McSorley, Co-Chair  
Rep. Elizabeth "Liz" Thomson, Co-Chair  
Rep. Gail Chasey

Sen. John C. Ryan  
Sen. John Arthur Smith  
Rep. Monica Youngblood

**Advisory Members**

Rep. Paul C. Bandy  
Rep. Kelly K. Fajardo  
Sen. Linda M. Lopez

Sen. Mary Kay Papen  
Sen. Lisa A. Torracco  
Rep. Jim R. Trujillo

**Work Plan**

The Tobacco Settlement Revenue Oversight Committee (TSROC) will continue its statutory oversight duties for the programs that request and 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 2013 interim, the TSROC plans to:

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

(2) receive testimony regarding tobacco settlement-related issues, litigation and legislation, and prepare recommendations of program funding levels for fiscal year 2015, 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; and

(4) make recommendations available to the New Mexico Legislative Council and the Legislative Finance Committee on or before December 15, 2013.

**Tobacco Settlement Revenue Oversight Committee  
2013 Approved Meeting Schedule**

| <u>Date</u> | <u>Location</u>       |
|-------------|-----------------------|
| June 11     | Santa Fe, Room 321    |
| July 29     | UNM-West              |
| August 28   | UNM HSC Cancer Center |
| October 30  | Santa Fe, Room 321    |
| November 20 | Santa Fe, Room 321    |

## **COMMITTEE AGENDAS**

Revised: June 6, 2013

**TENTATIVE AGENDA  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**June 11, 2013  
Room 321, State Capitol  
Santa Fe**

**Tuesday, June 11**

- 10:00 a.m.        **Welcome and Introductions**  
—Senator Cisco McSorley, Co-Chair  
—Representative Elizabeth "Liz" Thomson, Co-Chair
- 10:10 a.m.        (1)    **Interim Committee Procedures**  
—Raúl E. Burciaga, Director, Legislative Council Service (LCS)
- 10:30 a.m.        (2)    **History of the Tobacco Settlement**  
—Sandra Adondakis, New Mexico Government Relations Director,  
American Cancer Society Cancer Action Network
- 11:30 a.m.        (3)    **Update on the Master Settlement Agreement**  
—Ari Biernoff, Assistant Attorney General, Litigation Division, Office of  
the Attorney General  
—Claudia Ravanelli, Special Projects Coordinator, Litigation Division,  
Office of the Attorney General
- 12:45 p.m.        **Break/ Set up Working Lunch**
- 1:00 p.m.        (4)    **History of the Tobacco Settlement Revenue Oversight Committee, the  
Tobacco Settlement Permanent and Program Funds and  
Appropriations**  
—Shawn Mathis, Staff Attorney, LCS  
—Tom K. Pollard, Ph.D., Former Legislative Fiscal Analyst
- 2:30 p.m.        **Public Comment**
- 3:00 p.m.        (5)    **Review of 2013 Legislation**  
—Shawn Mathis, Staff Attorney, LCS
- 3:30 p.m.        (6)    **Review and Adoption of Interim 2013 Work Plan and Meeting Schedule**  
—Shawn Mathis, Staff Attorney, LCS
- 4:00 p.m.        **Adjourn**

Revised: July 23, 2013

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

**July 29, 2013  
UNM West  
2600 College Blvd. NE, Rio Rancho  
(Google Maps: 3200 Civic Center Circle NE, Rio Rancho)**

**Monday, July 29**

- 10:00 a.m.        **Introductions**  
—Senator Cisco McSorley, Co-Chair  
—Representative Elizabeth "Liz" Thomson, Co-Chair
- 10:10 a.m.        **Welcome**  
—Kevin Rogols, President and Chief Executive Officer, Sandoval Regional  
Medical Center
- 10:30 a.m.        (1) **Breast and Cervical Cancer Programs**  
—Gena Love, Program Manager, Breast and Cervical Cancer Early  
Detection Program, Department of Health (DOH)  
—Anne Foster, Medicaid Program Medical Director, Human Services  
Department (HSD)  
—Virginia Brooks, Breast and Cervical Cancer Program Manager, HSD
- 11:30 a.m.        (2) **Update on DOH Programs**  
—Benjamin Jacquez, Program Manager, Tobacco Use Prevention and  
Control Program, DOH  
—Judith Gabriele, Program Manager, Diabetes Prevention and Control  
Program, DOH  
—Patty Morris, Program Manager, Healthy Kids NM  
—Andrew Gans, Program Manager, HIV Prevention Program, DOH
- 12:30 p.m.        **Working Lunch Provided**
- 1:00 p.m.        (3) **Report on New Mexico Higher Education Campus Tobacco Policies and  
Approval of Minutes of June 11, 2013 Meeting**  
—Shawn Mathis, Staff Attorney, Legislative Council Service (LCS)
- 1:30 p.m.        **Public Comment**

- 2:30 p.m. (4) [State Investment Council \(SIC\) Primer, Update and Socially Responsible Investment](#)  
—Steve Moise, State Investment Officer, SIC  
—Vince Smith, Deputy State Investment Officer, SIC
- 3:30 p.m. (5) [Tour of Sandoval Regional Medical Center \(Committee Members Only\)](#)  
—Shawn Mathis, Staff Attorney, LCS
- 4:30 p.m. **Adjourn**

Revised: August 27, 2013

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

**August 28, 2013  
University of New Mexico Cancer Center  
Albuquerque**

**Wednesday, August 28**

- 10:00 a.m.           **Introductions**  
—Senator Cisco McSorley, Co-Chair  
—Representative Elizabeth "Liz" Thomson, Co-Chair
- 10:10 a.m.       (1)   **Welcome and Update on Genomics/Biocomputing/Specialty Education in Trauma/Specialty Education in Pediatrics/University of New Mexico (UNM) School of Medicine Instruction and General Purposes**  
—Dr. Richard Larson, Executive Vice Chancellor and Vice Chancellor for Research, UNM Health Sciences Center
- 10:30 a.m.       (2)   **UNM Cancer Center Update**  
—Dr. Cheryl Willman, M.D., Director and Chief Executive Officer, UNM Cancer Center
- 10:45 a.m.       (3)   **Tour of UNM Cancer Center (Committee Members Only)**  
—Dr. Cheryl Willman, M.D., Director and Chief Executive Officer, UNM Cancer Center
- 11:30 a.m.           **Lunch (Provided)**
- 12:15 p.m.       (4)   **Poison Center**  
—Jess Benson, Director, New Mexico Poison and Drug Information Center; Associate Professor, UNM College of Pharmacy
- 1:00 p.m.       (5)   **Taxation of Cigarettes and Other Tobacco Products**  
—Shannon Baxter, Bureau Chief, Audit and Compliance Division, Taxation and Revenue Department
- 2:00 p.m.       (6)   **Pediatric Oncology**  
—John Kuttesch, Jr., Ph.D., M.D., Chief, Pediatric Hematology/Oncology, UNM Children's Hospital
- 3:00 p.m.           **Public Comment**
- 3:45 p.m.           **Approval of Previous Meeting's Minutes and Adjourn**

Revised: October 29, 2013

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

**October 30, 2013  
Room 321, State Capitol  
Santa Fe**

**Wednesday, October 30**

- 10:00 a.m.           **Introductions**  
—Senator Cisco McSorley, Co-Chair  
—Representative Elizabeth "Liz" Thomson, Co-Chair
- 10:10 a.m.       (1)   **Indian Affairs Department**  
—Arthur P. Allison, Secretary, Indian Affairs Department (IAD)  
—Duane Duffy, Deputy Secretary, IAD  
—Allie Moore, Program Coordinator  
—Stephine Poston, Program Coordinator
- 11:10 a.m.       (2)   **E-Cigarettes**  
—Ari Biernoff, Assistant Attorney General, Litigation Division, Office of  
the Attorney General
- 12:00 noon           **Lunch**
- 1:00 p.m.       (3)   **Master Settlement Agreement Arbitration Decision**  
—Ari Biernoff, Assistant Attorney General, Litigation Division, Office of  
the Attorney General
- 2:00 p.m.       (4)   **Tobacco Settlement Permanent Fund Asset Allocation**  
—Steve Moise, State Investment Officer, State Investment Council (SIC)  
—Vince Smith, Deputy State Investment Officer, SIC
- 3:00 p.m.           **Public Comment**
- 4:00 p.m.           **Approval of Previous Meeting's Minutes and Adjourn**

Revised: November 19, 2013

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

**November 20, 2013  
Room 321, State Capitol  
Santa Fe**

**Wednesday, November 20**

- 10:00 a.m.           **Introductions**  
—Senator Cisco McSorley, Co-Chair  
—Representative Elizabeth "Liz" Thomson, Co-Chair
- 10:10 a.m.       (1)   **Health Impacts of E-Cigarettes**  
—Dona Upson, M.D., University of New Mexico, Internal Medicine  
Division of Pulmonary, Critical Care and Sleep Medicine; New  
Mexico VA Health Care System, Tobacco Dependence Specialist
- 11:10 a.m.       (2)   **American Lung Association Tobacco Report Card**  
—Christian Stumpf, Regional Government Relations Director, American  
Lung Association
- 12:10 p.m.           **Lunch**
- 1:00 p.m.       (3)   **Tobacco Settlement Permanent and Program Funds; Revenue  
Projections**  
—Greg Geisler, Analyst, Legislative Finance Committee
- 1:30 p.m.       (4)   **Proposed Legislation from the Attorney General for the 2014  
Legislative Session**  
—Ari Biernoff, Assistant Attorney General, Litigation Division, Office of  
the Attorney General
- 2:15 p.m.       (5)   **Agency Comments**
- 2:45 p.m.       (6)   **Public Comment**
- 3:15 p.m.       (7)   **Committee Legislation**  
—Shawn Mathis, Staff Attorney, Legislative Council Service
- 4:00 p.m.       (8)   **Review of FY 2014 Program Funding Levels and FY 2015 Funding  
Recommendations**
- 4:45 p.m.           **Approval of Previous Meeting's Minutes and Adjourn**

# **COMMITTEE MINUTES**

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

**June 11, 2013  
Room 321, State Capitol**

The first meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) for the 2013 interim was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on Tuesday, June 11, 2013, at 10:13 a.m. in Room 321 of the State Capitol in Santa Fe.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. Elizabeth "Liz" Thomson, Co-Chair  
Rep. Monica Youngblood

**Absent**

Rep. Gail Chasey  
Sen. John C. Ryan  
Sen. John Arthur Smith

**Advisory Members**

Rep. Paul C. Bandy  
Rep. Kelly K. Fajardo  
Sen. Linda M. Lopez  
Sen. Mary Kay Papen  
\*Rep. Jim R. Trujillo

\*promoted to a voting member for this meeting

**Staff**

Shawn Mathis, Staff Attorney, Legislative Council Service (LCS)  
Elizabeth Katz, LCS  
Abby Wolberg, LCS

**Guests**

The guest list is in the archived meeting file.

**Handouts**

Copies of all handouts are in the meeting file.

**Tuesday, June 11**

**Call to Order**

Representative Thomson called the meeting to order and welcomed the committee members and the audience to the meeting. She then asked committee members and staff to introduce themselves, and they did. Senator McSorley expressed the importance of the subject matter of the meeting.

## **History of the Tobacco Settlement**

Sandra Adondakis, New Mexico government relations director, American Cancer Society Cancer Action Network, started with a PowerPoint handout of the history of the Master Settlement Agreement (MSA). (See handout marked Agenda Item 2.) She referred to a chart on slide 4 and explained that the federal Centers for Disease Control and Prevention (CDC) recommended annual funding for tobacco control in New Mexico is \$23 million, but New Mexico only spends \$5 million to \$6 million annually. A majority of the MSA annual payment goes to the Department of Health for the Tobacco Use Prevention and Control (TUPAC) program.

She then explained that the state receives funds annually from the MSA, which is the result of litigation in which 46 states sued big tobacco companies. While this money is intended to help compensate states for health problems caused by tobacco use, the MSA does not require states to use the annual payments to pay for these health problems.

Ms. Adondakis explained that each year, the state receives around \$38 million, half of which by statute must go into the Tobacco Settlement Permanent Fund. The other half can be spent on a variety of health-related programs such as Medicaid or breast cancer screening.

A committee member asked Ms. Adondakis to confirm whether, by estimate, half goes into the permanent fund and the other half goes into programs. Ms. Adondakis explained that, depending on the financial condition of the state, annual payments have been diverted from the Tobacco Settlement Permanent Fund. She noted that over the last few years, the settlement money has been used to shore up Medicaid, for example. Ms. Adondakis said that the original statutory scheme was to build up the Tobacco Settlement Permanent Fund and collect interest on the fund in order to pay for programs.

A legislator explained that the MSA resulted from private litigation against "big tobacco" for misrepresentation of the health effects of smoking. He explained that Congress created the MSA to protect the tobacco industry from being bankrupted from piecemeal litigation.

Ms. Adondakis said that New Mexico is fortunate to have a comprehensive and effective tobacco prevention program. She explained that tobacco control has been studied extensively; cessation has been studied since the first surgeon general's report. Because of this, she explained, tobacco control program funding recommendations from the CDC are evidence-based. New Mexico decreased tobacco control funding in fiscal year (FY) 2011 and FY 2012 and should restore tobacco control funding to pre-recession levels, according to Ms. Adondakis.

Ms. Adondakis then referred to slide 5, which explains how funding tobacco control saves money and lives. When adequately funded and comprehensive, tobacco control programs reduce tobacco use, save lives and cut smoking-related health costs. She said that states with sustained and well-funded prevention programs, such as New York, have reduced youth smoking by 45% to 60%. When tobacco control program funding is cut, in many cases tobacco use has stopped declining (as in California) or has rebounded (as in Florida). She said it is necessary to sustain funding over time in order to protect initial gains and achieve further cuts to smoking

rates. Slide 7 indicates progress made in the United States and specific states, including New Mexico, in terms of decreasing adult smoking. Ms. Adondakis explained that it is important to know who is smoking, and she referred to slide 8, which shows that adults with the lowest income rates have the highest smoking rates.

Ms. Adondakis proposed that the legislature:

- restore funding to tobacco control programming;
- return to saving 50% of MSA payments in the Tobacco Settlement Permanent Fund;
- cover comprehensive cessation services through Medicaid; and
- increase the tax on non-cigarette tobacco products.

Ms. Adondakis then referred the committee to the TUPAC program report. (See handout marked Agenda Item 2.)

Returning to the PowerPoint handout, Ms. Adondakis explained that the MSA requires participating manufacturers to contribute to the fund. This cost is then passed on to the consumer, effectively raising the price of cigarettes. Ms. Adondakis said that this is important when controlling tobacco use among youth, as they are especially sensitive to price increases. The agreement also includes placing restrictions on advertising and promotion; providing states with funds that can be used to prevent tobacco use; and establishing the American Legacy Foundation, which is dedicated to reducing youth tobacco use.

Ms. Adondakis then addressed MSA advertising and marketing provisions that include a prohibition on targeting youth for tobacco advertising. She explained that the definition of "youth targeting" takes into account advertising volume, population exposure and the percentage of youth readership of the advertisement medium in question.

Flavored cigarettes and the use of cartoons appeal to children and can be interpreted as youth marketing. Some tobacco products have the same colors and designs as child-friendly products, which she said can be interpreted as youth targeting. The federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) bans flavored cigarettes. Ms. Adondakis said that there are flavored tobacco products that are not cigarettes.

A committee member asked whether "youth" means under 18 years of age. Federal law has set 18 as the minimum age for tobacco use. Another legislator asked about the age of initiation of tobacco use. Ms. Adondakis said that this usually happens in a person's early teenage years. An objective of tobacco control programs is to delay first use to people over age 19 because at that age a person is less likely to use tobacco. Ms. Adondakis also noted that state laws prohibit young people from purchasing tobacco but not from possessing tobacco because penalizing possession is not considered to be a best practice. She said that establishing tobacco-free environments helps discourage tobacco use by youths.

A committee member asked about the application of state tobacco laws on tribal lands. Another legislator suggested that the committee hear a presentation on tobacco use on tribal lands.

Ms. Adondakis noted that the use of celebrities and famous sports teams to advertise tobacco products is also banned. There is a limit on the use of tobacco brand-name sponsorship. Electronic cigarettes (e-cigarettes) are not prohibited from sponsorship as cigarettes are. The MSA also eliminates outdoor and roadside advertising because of concern over how highly visible these types of ads are. Ms. Adondakis said that a study shows that youths are particularly susceptible to tobacco placement in movies, and this is also prohibited under the MSA. The MSA also bans tobacco brand-name merchandise and youth access to free samples.

Ms. Adondakis said that the MSA also bans tobacco companies from lying or misrepresenting facts, and it imposes limitations on lobbying by tobacco companies, but much is open to interpretation.

A minimum pack size of 20 cigarettes prevents the sale of individual cigarettes. A committee member said that she has observed sales of individual cigarettes around the state. Ms. Adondakis said that she would look into this and suggested that the committee member might have seen cigarette-sized cigars that are sold individually, that can be flavored and that often look like cigarettes.

Ms. Adondakis noted that the Tobacco Control Act requires face-to-face sales, proof of age and a minimum package size. It is illegal to offer self-serve tobacco sales; the sale of tobacco has to be clerk-assisted, which helps avoid theft by young people. She said that the Tobacco Control Act grants the federal Food and Drug Administration (FDA) jurisdiction over smokeless tobacco, cigarettes and roll-your-own tobacco. However, this authority has to be explicit, and so far, the FDA has not asserted its jurisdiction over e-cigarettes, cigars, pipe tobacco or novelties (strips, sticks, etc.). Ms. Adondakis said that the FDA tried to regulate e-cigarettes as a drug-delivery device but lost a challenge in court. She noted that big tobacco companies have purchased e-cigarette companies, which is of concern. (See handout under Agenda Item 2.)

Ms. Adondakis said that the FDA needs to determine whether e-cigarettes are safe for use and are effective for cessation of smoking and whether the FDA will regulate them as a nicotine replacement. She said that people may hear that e-cigarettes help people quit smoking, but the long-term health effects are unknown. She explained that there is concern over e-cigarette advertising campaigns that advertise e-cigarettes as a cessation tool when this has not yet been scientifically proven.

### **Questions and Comments**

A committee member asked whether a person has to be over 18 to purchase tobacco products on a reservation. Ms. Adondakis said that she is not sure.

Another legislator asked whether the Tobacco Control Act applies on reservations. Ms. Adondakis said that she is not sure.

A committee member compared the e-cigarette delivery system to the use of vaporization as a delivery system for medical cannabis.

Another legislator asked whether most e-cigarettes are sold online. Ms. Adondakis explained that she did not know what the specific sales percentage of online sales of e-cigarettes is, but that e-cigarettes are widely available.

### **Update on the MSA**

Ari Biernoff, assistant attorney general, Litigation Division, Office of the Attorney General, went over the terms of the MSA and gave an update on recent proceedings. (See handout under Agenda Item 3.)

Mr. Biernoff explained that through the MSA, signatory tobacco manufacturers are required to abide by regulations and pay into a settlement fund. He said that in New Mexico, tobacco-related health care costs are well over \$400 million annually but that the annual settlement payment the state receives is less than one-tenth of that.

Signatory manufacturers were concerned that nonparticipating manufacturers would have an unfair market advantage. Participating manufacturers require that states pass statutes to require nonparticipating manufacturers to make annual deposits into an escrow account. This, they believe, levels the playing field. The state does not receive or have access to these escrowed amounts. New Mexico passed an escrow statute and must diligently enforce the escrow requirement to obtain the full amount of MSA annual payments.

Under the MSA, the participating manufacturers have the right to challenge a state's escrow statute enforcement record. Mr. Biernoff reported on the MSA arbitration in which New Mexico recently participated. The Office of the Attorney General is awaiting a ruling from the arbitration panel. The ruling is expected in the next few months.

### **Questions**

In response to a question, Mr. Biernoff explained that the state gets 0.06% of the total annual amount of money that participating manufacturers pay into a global settlement fund. He explained that this percentage is roughly New Mexico's share of the nationwide cigarette market at the time of the agreement and does not change over time.

A legislator asked whether tribal lands are included in the escrow statute. Mr. Biernoff noted that the MSA is complicated. He explained that in the escrow program, the money paid into the escrow account does not belong to the state. He said to think of the cigarette market as divided into two groups: (1) MSA participating manufacturers; and (2) nonparticipating manufacturers. Mr. Biernoff said the companies that signed the MSA do not pay escrow but, instead, pay into a global fund that then gets distributed to the states. The bigger states with more smokers get a bigger share. Those manufacturers that did not sign the MSA pay escrow. He noted that these companies have to establish a bank account, and the money stays in the account. The state maintains oversight over those accounts. Companies do not have to pay escrow for sales made on tribal land.

Mr. Biernoff explained that the nonparticipating manufacturers file quarterly reports with the attorney general. The Office of the Attorney General does not collect escrow, but it audits the manufacturers for compliance with escrow obligations.

A legislator asked how a state has jurisdiction over the companies, including operations on tribal lands. Mr. Biernoff explained that manufacturers are subject to New Mexico's laws and financial penalties for violating those laws if they sell products in New Mexico. Mr. Biernoff then explained that the tobacco product manufacturer is the party responsible for escrow payment; there are no known manufacturers on tribal land, so state jurisdiction to demand escrow payments from manufacturers on tribal land is not an issue.

A committee member asked how many companies did not sign the MSA. Mr. Biernoff said that when the MSA was first signed, there was no such thing as nonparticipating manufacturers, and some manufacturers entered the market after the MSA was consummated. Later-formed manufacturers that wish to participate can join the MSA. A later-formed manufacturer that is not an MSA signatory is subject to the state's laws governing escrow.

Several members were curious regarding whether the state could pursue litigation against nonparticipating manufacturers for state health expenditures related to tobacco use. Mr. Biernoff explained that the participating manufacturers still have a huge percentage of the market, and this would have to figure into a decision to litigate against nonparticipating manufacturers.

A representative for Native Trading Associates explained that his company is a nonparticipating manufacturer headquartered in New York that sells primarily on reservations in New Mexico. Litigation between Native American Trading and the state is pending on the issue of escrow.

A committee member asked about the amount of escrow paid by nonparticipating manufacturers in 2009. Claudia Ravanelli, special projects coordinator, Litigation Division, Office of the Attorney General, reported that nonparticipating manufacturers paid around \$1.4 million.

Albert Lama, chief deputy attorney general, Office of the Attorney General, explained that a group of seven states sued by the participating manufacturers settled instead of proceeding to arbitration. Settling states are required to expand the scope of their enforcement obligations. He explained that New Mexico went to arbitration because the attorney general did not deem settlement to be in the best interest of the state.

Mr. Lama noted that the Office of the Attorney General audits every licensed cigarette distributor and that distributors are required to report all sales. He said the Office of the Attorney General has done a good job of regulating nonparticipating manufacturers in the last several years and has brought the number of noncompliant nonparticipating manufacturers down to zero, amounting to almost total compliance. Mr. Biernoff reported that the Office of the Attorney General has filed 15 enforcement actions against nonparticipating manufacturers but

that some of these actions will be uncollectible because some companies go out of business and are judgment-proof.

A committee member asked Mr. Biernoff to provide copies of the tobacco-related bills the governor vetoed in 2011 and 2012 and asked what the fiscal impact of those bills was. These bills are posted under Agenda Item 3.

A committee member asked whether the Office of the Attorney General would allow a representative to attend TSROC meetings as he thinks this is important. Mr. Biernoff said he would look into this, and he also recognized the Taxation and Revenue Department (TRD) for its assistance in presenting the state's case at the arbitration.

A committee member said he would also like a person from the TRD at future meetings in order to provide more expert information to the committee.

### **History of the TSROC, the Tobacco Settlement Permanent and Program Funds and Appropriations.**

Ms. Mathis gave an overview of the history of the committee, the committee's duties and the tobacco settlement funds. Ms. Mathis explained that while money from the Tobacco Settlement Program Fund may be appropriated for health and educational purposes, the statute also enumerates expressly authorized programs. Ms. Mathis explained that in nine of the fiscal years since the creation of the Tobacco Settlement Permanent Fund, no part of the annual MSA payment has been retained in the Tobacco Settlement Permanent Fund. (See handout under Agenda Item 4.)

Dr. Tom Pollard, Ph.D., former legislative fiscal analyst, discussed what has happened with the Tobacco Settlement Permanent Fund. He said that the intent of a permanent fund is to build the corpus and spend the earnings. He reiterated that 50% of the annual MSA payment was intended to stay in the permanent fund and 50% was intended to go to the program fund. Dr. Pollard then went over his handout, which is marked as Agenda Item 4.

Dr. Pollard indicated that page 4 of his handout contains a 2013 bill asking the legislature to restore funds diverted from the permanent fund. If this bill had passed, Dr. Pollard said, the fund would have gained about \$74 million over the next 13 years. He said that 50% of the MSA payments are supposed to go to the permanent fund until such as time as 4.7% of the amount that is in the corpus exceeds the annual payments, and then all of the annual payments go into the permanent fund. Then it will fund programming in perpetuity. He said the failure to save a portion of each annual payment in the permanent fund has prevented this from happening.

Dr. Pollard explained that page 14 includes a graph for the general fund final summary based upon legislation that passed the house and senate. He said that during rough economic times, the state's reserves declined, and to shore up the state's credit rating the permanent fund was made a part of the reserves of the state. Dr. Pollard noted that the legislature can come in and tap the state's reserves to the full 9.9% indicated on page 14 of the handout, but as indicated on page 16, it is easier to access the general fund reserve.

The committee discussed bills introduced during the 2013 legislative session to use tobacco permanent funds to shore up the Lottery Tuition Fund and for early childhood programming. They also discussed the partial veto of SFC/SFC/SB 113 and SEC/SB 392.

### **Appropriations and Review of 2013 Legislation**

Ms. Mathis brought the committee's attention to a packet entitled "Tobacco Settlement Fund Appropriations FY99-FY13". She then gave a brief review of certain 2013 tobacco-related legislation. (See handout marked Agenda Item 5)

### **Review and Adoption of Interim 2013 Work Plan and Meeting Schedule**

The committee then discussed the work plan and voted to change the July 31 meeting to July 29, which will be at the University of New Mexico (UNM)-West campus in Rio Rancho. It was decided that the August 28 meeting in Albuquerque will be at the UNM Health Sciences Center cancer center. The October 7 meeting was moved to October 30, and the November 15 meeting to November 20.

Representative Trujillo was appointed as a voting member for the day to provide the committee with a quorum so that it could vote on these changes.

The committee then looked over the proposed committee travel budget. The proposed work plan and changes were adopted by a consent vote.

### **Adjourn**

The meeting adjourned at 2:45 p.m.

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

**July 29, 2013  
UNM-West  
Rio Rancho**

The second meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) for the 2013 interim was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on Monday, July 29, at 10:19 a.m. at the University of New Mexico (UNM) West campus of UNM in Rio Rancho, New Mexico.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. Elizabeth "Liz" Thomson, Co-Chair  
Rep. Gail Chasey  
Sen. John C. Ryan  
Sen. John Arthur Smith

**Absent**

Rep. Monica Youngblood

**Advisory Members**

Rep. Kelly K. Fajardo  
Sen. Linda M. Lopez  
Sen. Lisa A. Torracco  
Rep. Jim R. Trujillo

Rep. Paul C. Bandy  
Sen. Mary Kay Papen

**Staff**

Shawn Mathis, Legislative Council Service (LCS)  
Alexandria Tapia, LCS  
Jennifer Dana, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of all handouts are in the meeting file.

**Monday, July 29**

**Call to Order**

Representative Thomson called the meeting to order and welcomed the committee members, staff, presenters and audience members to the meeting. Upon her request, committee members and staff introduced themselves.

## **Welcome**

Kevin Rogels, president and chief executive officer of the Sandoval Regional Medical Center (SRMC), welcomed the committee members to UNM-West and provided the committee with information and highlights about the facility. The SRMC has been open for about one year, providing care to its first patient on July 17, 2012. The facility features 72 acute care beds, six operating rooms and surgical theaters, and ambient environmental systems designed to increase the level of comfort and to lower the anxiety levels of patients. The SRMC is staffed by approximately 400 full-time-equivalent physicians, 275 of whom are UNM faculty and 95 of whom are community physicians; and the staff are specialized in a broad range of medical disciplines. The facility boasts high patient satisfaction rates, indicating 89% patient satisfaction and inpatient satisfaction scores as high as 92%. Mr. Rogels attributes the high patient satisfaction rates in part to staff hiring practices. Staff are screened through a behavioral interview process, and hiring managers seek out five specific qualities in potential staff: service, quality and safety, excellence, integrity and teamwork. Only 20% of interviewees are hired.

## **Questions and Comments**

A committee member asked about the traffic in the emergency room at the SRMC. Mr. Rogels said that the emergency department is the busiest department at the SRMC. It has recently added a second provider during peak hours, and patient turnaround time is approximately 2.5 hours. Mr. Rogels added that patients come from central New Mexico, with the majority coming from Bernalillo and Sandoval counties. The SRMC is in the process of becoming a designated level III trauma center. At the facility, the emergency room is equipped to handle any single-system trauma; however, multiple-system trauma patients are transported via ambulance to the UNM Hospital. Mr. Rogels informed the committee that approximately 22% of the SRMC's patients are indigent. Because the SRMC is a safety-net hospital, approximately 36% of contracts are managed care contracts.

Another committee member asked if the SRMC competes with Presbyterian Hospital. Mr. Rogels said that there is really not competition because the service areas of the two facilities are different. Mr. Rogels added that the services offered by Presbyterian Hospital and the SRMC are complementary.

A committee member asked about the cost of the SRMC, including real estate and equipment. Mr. Rogels answered that the total cost for the facility was \$143 million. The mortgage is for 30 years with Build America Bonds; this covers the land and physical plant. Mr. Rogels said that the land is valued at \$135 million, with \$8 million in financing costs; \$76 million went into construction and \$42 million went into purchasing equipment. The useful life of the equipment varies between seven and 15 years, depending on the machine.

Another committee member asked about the indigent fund tax for Sandoval County. Mr. Rogels said there is a mill levy of one-eighth cent to pay for indigent care; the money is matched by Medicaid. The committee member encouraged Mr. Rogels to seek tax funds from the county for indigent care.

A committee member asked a question about patient census and growth trends for the SRMC. Mr. Rogels said that of the 12 senior behavioral health beds, eight are full, on average, and of the 48 medical surgery beds, 25 are full, on average. Mr. Rogels also pointed out that because the SRMC is a small facility, there are significant peaks and valleys and variations in patient traffic; the hospital usually has its peak activity on Thursdays. The SRMC trends metrics daily, and the facility shows strong growth trends.

### **Breast and Cervical Cancer Programs**

Gena Love, program manager of the Breast and Cervical Cancer (BCC) Early Detection program in the Department of Health (DOH), began her presentation to the committee by providing statistics of the rates of BCC diagnoses in New Mexico and outlining some of the barriers to BCC screening. (The specific BCC numbers provided can be found on slides 2 through 5 in the handout, marked as agenda item 1.) Ms. Love informed the committee of the eligibility requirements for the program and provided some historical background of the program. She updated the committee on the ways that the tobacco settlement funds (TSFs) have been used to help the BCC Early Detection program achieve its goals; the program has used the funds to serve more women, serve younger women and make the three-to-one match required by the Centers for Disease Control and Prevention (CDC) in order to continue to receive funding. Ms. Love concluded her presentation by providing the committee with raw numbers of women served through the BCC Early Detection program using tobacco settlement money since 2010 (see slide 7 of the handout for more information). Additional information provided by Ms. Love included: program expansion plans; partnership plans; and information on the ways the federal Patient Protection and Affordable Care Act (PPACA) will benefit women in New Mexico.

Anne Foster, Medicaid program medical director in the Human Services Department (HSD), presented to the committee on the topics of Medicaid BCC program enrollment, costs and future care. Ms. Foster told the committee that 2,274 women have been enrolled in the Medicaid BCC program within the last three fiscal years. Since fiscal year (FY) 2008, just over 500 BCC program individuals have netted approximately \$8 million in paid claims each year. The majority of expenditures for FY 2013 were for outpatient hospital services (\$3.1 million), physician charges (\$2.7 million) and pharmaceutical (\$783,000), inpatient (\$714,000) and laboratory/x-ray (\$192,000) services (see second handout for agenda item 1, slides 3 to 5). Ms. Foster concluded her presentation by providing information on future care for individuals enrolled in the BCC program prior to December 2013 and how care and services will be made available to women enrolling in the New Mexico Health Insurance Exchange after October 2014. Ms. Foster placed emphasis on the income benchmarks required for women to be enrolled in the Medicaid BCC program.

### **Questions and Comments**

A committee member asked Ms. Foster to talk to the committee about the level of Medicaid match for the BCC program, and asked a question about the screening process for BCC and the BCC Early Detection program. Ms. Foster said that the Medicaid match for the program is 90%. She informed the committee that for a woman to receive treatment through the Medicaid BCC program after a confirmed diagnosis of breast or cervical cancer, the screening must have been completed by a provider signed up for screening with the DOH. The committee

member said that public awareness of the BCC Early Detection program and the Medicaid BCC program should be increased, since prevention of BCC is more cost-effective than treatment. The committee member would encourage all providers to participate in DOH screening.

Another committee member asked how women are screened for BCC and what the budget request is for 2014 from the TSROC. Ms. Foster said that providers recommend screening for BCC to women. Also, community partners of the BCC Early Detection program do the best job of identifying and recommending people who should be tested and who qualify for the program. If the women are enrolled in the Medicaid BCC program, all costs are covered by the program. Ms. Foster stated that the same level of funding for the program will be requested for 2014 as was requested in 2013.

Several committee members asked about access to services for women located in rural areas. The presenters said that there are over 240 contracted providers across the state and that all federally qualified health centers and community health centers participate in the program. Barriers to care for women located in rural areas exist in the areas of follow-up and treatment following screening. The presenters did point out that the program does pay for travel expenses incurred in obtaining treatment.

A committee member asked for data on the number of women who qualify and need services from the program, as well as survival rates for women with BCC in the program. The presenter said that there are women enrolled in the program who do not access all of the services for which they are eligible. Additionally, approximately 80% of women who need to be screened through the program are not screened due to insufficient funding, and 50% of those who would have been eligible are not being screened through the DOH. Those not screened through the DOH become self-pay cancer patients, which creates a familial and social financial disaster. The presenter pointed out that once the Medicaid expansion happens, any woman who qualifies for expansion will be covered or will be able to buy insurance on the exchange. The presenters informed the committee that the survival rate of women in the program with BCC is slightly lower than that of the entire state, owing largely to the fact that the women in the program are not regularly being screened for BCC, so they enter the program with more advanced BCC.

Another committee member asked how income affects the population likely to have BCC and if there is a method for breaking down the racial and socioeconomic status of those with abnormal screenings. The presenter said that enrollment takes place at community health centers, so all that is known is that the women who qualify for the program are below the federal poverty level (FPL). Those with income at 138% of the FPL will be screened and then enrolled into a special category of Medicaid. If a woman has a higher income and qualifies for the exchange, she will be directed there. Under the PPACA, screening will have to be provided, but diagnostic follow-up will not be covered without cost-sharing. When women register, they do have access to where the reported domicile is located, so geographic trends could be observed.

A committee member asked if future efforts are being planned to increase enrollment in Medicaid BCC. The presenter said that the HSD is working to conduct 178 outreach meetings

for the Medicaid expansion and the New Mexico Health Insurance Exchange. Funding for outreach is coming from federal grants. Additionally, there is \$80,000 for outreach to rural communities.

Several committee members asked the presenters for more information regarding human papillomavirus (HPV) vaccinations. The presenter said that the HPV vaccine is directed toward children; for that reason, the majority of women currently accessing the BCC program have not been vaccinated. The presenter said that it takes approximately 10 years to develop invasive cervical cancer after exposure to HPV, which is the primary cause of cervical cancer. Gardasil vaccinations are offered until age 26. Guidelines recommend initial screenings at age 21. Earlier screening is not a good use of funds. The vaccine covers the two most common strains of HPV, but there are about two dozen strains.

### **Update on DOH Programs**

Benjamin Jacquez, program manager of the Tobacco Use Prevention and Control program (TUPAC), presented best practices for tobacco control from the CDC, trends in tobacco use by New Mexico youth, the strategic plan for tobacco control for FY 2014 in New Mexico, the ways in which the program utilizes the TSFs and TUPAC media campaigns for tobacco control. Mr. Jacquez educated the committee on the trends of tobacco use by New Mexico youth. Cigarette and cigar use have been trending downward since 2003; however, the use of emerging tobacco products such as a hookah, flavored tobacco products and e-cigarettes continues to rise. Among youth tobacco users in New Mexico, 60% are using hookah and 65% use multiple tobacco products; 12.6% of youth tobacco users use cigarettes only. In light of these statistics, Mr. Jacquez highlighted the TUPAC's tobacco control plan for FY 2014; the plan includes QUIT NOW and DEJELO YA telephone- and web-based cessation services, includes increased efforts to educate the public on the dangers of secondhand smoke and further attempts to regulate the time, place and manner in which tobacco can be advertised and sold. (Please refer to the handout, slides 2 through 11, marked as agenda item 2, for more information.)

Judith Gabriele, program manager of the Diabetes Prevention and Control program (DPP), spoke to the committee about the prevalence of diabetes and pre-diabetes in New Mexico, the role of the National DPP in New Mexico and how DPP funds have been utilized to achieve the goals of the program. Ms. Gabriele presented data revealing that approximately 170,000 adult New Mexicans were diagnosed with diabetes between 2008 and 2012, and an additional 530,000 adult New Mexicans were diagnosed with pre-diabetes during this period; this upward trend has held true since 2001. Ms. Gabriele informed the committee that New Mexico was one of only eight states to receive funding from the National Diabetes Prevention program, and she spoke on the manner in which DPP funds were allocated in FY 2013. Funds were used to employ staff, to implement two major initiatives (health systems improvement and the National DPP), to support Kitchen Creations programs, for professional development/training and to coordinate efforts with other chronic disease programs. There are 20 DPP sites located throughout New Mexico. (Please refer to the handout, slides 13 through 18, marked as agenda item 2, for more information.)

Patty Morris, program manager of Healthy Kids New Mexico, presented information to the committee on New Mexico childhood obesity trends, Healthy Kids New Mexico programs and communities, the manner in which Healthy Kids New Mexico has used the TSFs and the early successes of this program. Ms. Morris informed the committee that in 2012, 14.6% of incoming kindergarten students and 21.4% of incoming third grade students were obese. From the same data pool, Native American kindergarten and third grade students were significantly more likely to be obese than their Hispanic and White counterparts. Healthy Kids New Mexico programs are based in more than 10 communities throughout New Mexico (Healthy Kids Healthy Communities, Healthy Kids Healthy Childcare and Healthy Kids Surveillance System, among others) and have achieved some measure of success: the Robert Wood Johnson Foundation reports that the state has seen a 5.3% decline in obesity among third grade students. Ms. Morris presented the TSFs allocated for FY 2013; funds were distributed among the Healthy Kids Las Cruces and Healthy Kids Chaves County programs, as well as to conduct nutritional and physical activity surveys of elementary school children and to support community efforts for reducing exposure to secondhand smoke in multi-unit housing. (Please refer to slides 20 through 25 of the handout, marked as agenda item 2, for more information.)

Andrew Gans, program manager of the HIV Prevention program, spoke about allocations from the TSFs to the Harm Reduction and Hepatitis programs and how the money has been used and presented achievements of the programs for FY 2013. Mr. Gans said that TSROC support is essential to these programs because neither program receives any federal money for contractual services, which include delivery of hepatitis vaccinations, substance abuse treatment, hepatitis C treatment and HIV/sexually transmitted disease testing. The Harm Reduction program, coupled with the statewide Syringe Services program (SSP), has achieved a collection rate of 95% to 97%; in annual re-enrollment interviews, 84% to 87% of program participants report not sharing syringes. Mr. Gans also said that the Overdose Prevention program in New Mexico is growing rapidly. More than 1,200 persons were trained to administer the overdose-reversal drug Narcan in 2012, doubling the number of overdose reversals for 2012 (there were 175 overdose reversals in 2011 and 510 overdose reversals in 2012). (Please refer to slides 27 through 32 in the handout, marked as agenda item 2, for more information.)

### **Questions and Comments**

A committee member asked why the number of individuals enrolling in the QUIT NOW program decreased during the past year. Mr. Jacquez said that the number of people enrolling has decreased because there are currently a wider variety of cessation services available, including home- and web-based services.

Another committee member, commenting on the trends of tobacco use by New Mexico youth, said that New Mexico has been unsuccessful recently in raising taxes on tobacco products, which is unfortunate because studies show that increasing taxes leads to a decline in tobacco use. The committee member also recommended that the TUPAC look into the Media Literacy Project; she suggested that the program might utilize a tool similar to the project to educate New Mexico youth about hookahs and other emerging tobacco products.

A committee member asked about national childhood obesity trends. Ms. Morris informed the committee that national childhood obesity trends show that obesity levels are leveling off or decreasing; however, feelings of cautious optimism should be tempered because this trend is based on only three years of data.

Another committee member commented on the amount of tobacco settlement funding for the DPP. He noted that the program's funding would be down to \$200,000 (from \$430,000) in the coming year because the program does not have any state funding. The committee member recommended that the TSROC provide support for the DPP.

Several committee members asked questions about barriers to getting children to eat healthy foods and barriers to getting healthy foods into schools. Ms. Morris said that the key to getting children to eat healthy foods is exposure to healthy foods; literature states that children must be exposed 21 times before they are likely to enjoy these foods. Several school districts implement a "21-Day Challenge" to encourage students to eat healthy foods. The creation of school gardens has also proven effective in getting children to eat healthy foods. Making a connection to where food comes from is also important in getting children to want to eat healthy foods; they should understand that food comes from the earth, not the grocery store. In regard to getting healthy foods into schools, Ms. Morris said that the ease with which this can be done varies by school district. Food service directors must be involved; there are also bidding systems, purchase order forms and other paperwork to overcome. However, some farm-to-table programs have been successful in getting fresh, healthy foods into middle schools and high schools.

A committee member commented that ranchers should be involved in getting healthy, locally grown food into schools. A committee member noted that the Farm Bureau has been looking into this matter because it often facilitates the process to have a third party involved. Ms. Morris explained that farm-to-table programs are working with ranchers; however, problems arise in tracking disease paths if there should be an outbreak of disease.

Another committee member recommended that a memorial be passed to encourage or require school districts to buy locally grown foods. The memorial should give preference to New Mexico schools in competitive bid situations and should reduce the paperwork burdens on districts that buy local.

Other committee members asked questions about the number of times individuals attempt to quit tobacco or other drugs before achieving long-term success and what are the barriers to success. Regarding addictions to nicotine, Mr. Gans informed the committee that it often takes about seven to 10 attempts for an individual to quit smoking; for this reason, no one is ever discouraged from seeking help. Mr. Gans told the committee that a significant barrier for an individual wanting access to treatment is being on a waiting list for a facility. Often, individuals will be discouraged or lose interest in recovery if there is a wait time for services.

Committee members also asked about the overdose-reversal drug Narcan. Mr. Gans explained that Narcan is a drug that can be used to counteract an overdose of opiates; the drug

can be administered intravenously or as a nasal spray. After revival with Narcan, an individual should go to the hospital for treatment. One dose of Narcan costs approximately \$14.00. There are no known liability concerns for administering Narcan. It is not uncommon for police and emergency medical services personnel to carry Narcan.

Several committee members expressed concern about the rising popularity of e-cigarettes. Mr. Jacquez explained that e-cigarettes fall under the category of emerging tobacco products, and the use of e-cigarettes is expected to overtake the use of cigarettes within 20 years. Regarding quitting e-cigarettes, there has been little research on the difficulty of this with respect to their nicotine and flavor content.

There was discussion on the graduation rates of students who are self-reported smokers compared with students who do not smoke.

### **Report on New Mexico Higher Education Campus Tobacco Policies**

Ms. Mathis reported on Senate Memorial 63. A list of New Mexico secondary educational institutions and their tobacco policies will be forwarded to the committee members in the future. Ms. Mathis also provided committee members with three handouts concerning tobacco control policies, programs and trends published by the federal Department of Health and Human Services, the CDC and the American Lung Association.

### **Tobacco Settlement Arbitration**

Ari Biernoff, New Mexico Attorney General's Office, informed the committee on the status of arbitration for the tobacco settlement. Mr. Biernoff reported that, as of the TSROC meeting date, there had not been a final decision reached by the arbitration panel but that a decision is expected by the end of the summer; the absolute cutoff for a decision is November 2013.

### **Questions and Comments**

A committee member asked about the level of cooperation between the administration and the Taxation and Revenue Department (TRD) regarding the arbitration. Mr. Biernoff said that there has been much cooperation, with two of the witnesses coming from the TRD. The Attorney General's Office covered the travel and hotel costs for the witnesses.

Another committee member asked about the strength of the state's presentation in the case. Mr. Biernoff said that the state put on a strong case and that there are many facts in favor of the state. He further stated that there was good expert testimony on tribal law and economics presented on behalf of the state.

### **Approval of Minutes of June 11, 2013 Meeting**

A motion by Representative Chasey to approve the minutes of the previous meeting was seconded by Senator McSorley and unanimously approved.

## **Public Comment**

Anna Hatanaka Otero spoke in support of the Family Infant Toddler program (FIT). She wanted the committee to recognize that the program has not been fully funded in the past and that the FIT has drafted a proposal to the DOH requesting \$4 million for supplemental deficiencies. Ms. Otero informed the committee that the FIT program has not seen a funding rate increase in the last 10 years. Ms. Otero urged the committee to support an appropriation from the TSFs of \$2 million for the FIT to help fund service providers for the retention of staff, to recruit new staff and to maintain the quality services that benefit children and families.

## **State Investment Council (SIC) Primer, Update and Socially Responsible Investment**

Steve Moise, state investment officer, State Investment Council (SIC), and Vince Smith, deputy state investment officer, SIC, presented an overview of the SIC's role in managing the Tobacco Settlement Permanent Fund (TSPF), a fund investment update and challenges with asset allocation. The overview included information about the SIC members, operations and recent reforms and the assets under SIC management. (Please refer to slides 2 through 5 in the handout, marked as agenda item 4, for more information.) The SIC invests approximately \$14 billion each year. Mr. Moise and Mr. Smith presented data revealing that the TSPF grew by approximately \$21.2 million in FY 2013 (an investment return of approximately 12.5%), and the fund currently has a balance of approximately \$170.2 million. The majority of holdings reside in public equities (slide 6). In FY 2013, the SIC's funds saw approximately a 13.3% return on investments (ROI); other large state funds saw a 12% ROI on average. The presenters recommended two options for restructuring the TSPF, with intergenerational equity as the ultimate goal: 1) improved, but similar, allocation of investments; and 2) increased diversification of investments into alternative asset classes (slide 8). Mr. Moise and Mr. Smith explained to the committee that there is still much for the SIC to accomplish regarding the TSPF. They requested a land grant permanent funds (LGPF) amendment to remove statutory or constitutional conflict and a cap on international investments; requested a study of the benefits of consolidating New Mexico investments in the future; and recommended that fund in-flows be increased and protected to increase distributions and benefits each year (slide 11). Along with the consolidation of investment management in New Mexico, the presenters recommended that the committee consider increasing the retention of severance tax funds in the TSPF.

## **Questions and Comments**

A committee member asked about the overall performance of the LGPFs. The presenter said that the five-year performance is still under 5% because it includes data from 2008.

Several legislators discussed the status of the TSPF as a reserve fund. A legislator said that the TSPF is about one-third of the state's reserve. His long-term conservative approach would be to grow the fund and not use the TSPF as part of the reserve. Another committee member suggested managing the fund more aggressively because although the fund is a reserve fund, it is one of the last funds to be accessed in an emergency.

There was discussion about using the TSPF to support programs, including Medicaid and TUPAC. A committee member suggested that increasing the fund through aggressive

investments would be good, so that the earnings from the fund could be used to support various programs.

A committee member posed the question of constitutionally protecting the TSPF. Another member cautioned against this because the fund may be needed for "rainy day" purposes in the future, and constitutional protections would make it difficult to access the fund in an emergency situation.

Another committee member commented that, nationally, endowments distribute about 5% of their funds, while New Mexico is distributing about 5.8%. Additionally, Arizona distributes 2.5% of its permanent fund. North Dakota has expressed interest in talking to New Mexico because North Dakota recently established a permanent fund.

Committee members expressed concern over investing in projects where the cost of mortgages exceeds the useful life of any equipment or technology involved and asked the SIC how to handle this situation. The presenters said that the SIC does not get directly involved in these situations but will participate in these types of discussions. Mr. Moise and Mr. Smith recommended legislative restraint on spending to avoid depletion of capital outlay and severance tax funds.

Regarding the presenters' recommendation for the consolidation of investment management in New Mexico, a committee member noted that this question has been put to the SIC by the Investments and Pensions Oversight Committee in the past. The overall recommendation from the committee members and presenters is to keep all committees and program boards in place and to ask an investment consultant to provide an objective assessment on the positive and negative aspects of consolidation.

Concerns about partisanship in state investment strategy were expressed.

Several committee members asked questions about how the SIC views and manages fees and hidden fees in the investment process. Mr. Moise and Mr. Smith said that the current SIC membership views fees differently than the previous membership. Fees are viewed as an investment. The SIC strives to hire the best managers possible; for every \$1.00 spent in management fees, the SIC expects \$2.00 to \$3.00 back in additional returns. Another strategy the SIC has employed is to make larger investments and to hire fewer managers. The SIC no longer pays third-party marketing fees or finder's fees.

A committee member asked about the SIC's decision to invest TSPF money in tobacco. The presenter said that the tobacco investments are index funds; tobacco companies are still very large and are a part of most major portfolios.

Another committee member asked about the performance of socially responsible investments. The presenters said that there are studies that show both positive and negative returns on socially responsible investments.

**Adjourn**

The meeting adjourned at 5:30 p.m., at which time various staff and committee members toured the SRMC.

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

**August 28, 2013  
University of New Mexico Cancer Center  
Albuquerque**

The third meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) for the 2013 interim was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on Wednesday, August 28, 2013, at 10:20 a.m. at the University of New Mexico (UNM) Cancer Center in Albuquerque, New Mexico.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. Elizabeth "Liz" Thomson, Co-Chair  
Rep. Gail Chasey  
Rep. Monica Youngblood

**Absent**

Sen. John C. Ryan  
Sen. John Arthur Smith

**Advisory Members**

Sen. Linda M. Lopez  
Sen. Lisa A. Torraco  
Rep. Jim R. Trujillo

Rep. Paul C. Bandy  
Rep. Kelly K. Fajardo  
Sen. Mary Kay Papen

**Staff**

Shawn Mathis, Legislative Council Service (LCS)  
Jennifer Dana, LCS  
Branden Ibarra, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of all handouts are in the meeting file.

**Wednesday, August 28**

**Call to Order**

Representative Thomson called the meeting to order and welcomed the committee members, staff, presenters and audience members to the meeting. Upon her request, committee members and staff then introduced themselves.

## **Welcome and Update on UNM Health Sciences Center (HSC)**

Richard Larson, M.D., executive vice chancellor and vice chancellor for research of UNM HSC, welcomed the committee members to the UNM Cancer Center. Dr. Larson informed the committee that UNM HSC plays a critical role in New Mexico; the facility delivers health care services, trains health professionals, fosters innovation in biomedical research and contributes to New Mexico's economy. Dr. Larson told the committee that UNM HSC carries out its mission through exceptional delivery of comprehensive, high-quality and unique patient care; by growing and educating the next generation of health care professionals; and, through research, by creating new knowledge to increase the quality of life for New Mexicans. Dr. Larson informed the committee that funding to the HSC has decreased steadily since 2007. The HSC has adapted to manage an increased workload with reduced staff and has consolidated and merged management oversight.

Dr. Larson informed the committee that the UNM Cancer Center uses tobacco settlement funds (TSFs) to support clinical care, education and research into tobacco-related illnesses, including cancer, infectious diseases and immunity, brain and behavioral illnesses, diabetes and vascular diseases; to support biomedical research; and to fund other needed health-related programs. Specifically, TSFs support the New Mexico Poison and Drug Information Center (NMPDIC), the pediatric oncology program and biomedical research. In addition to the aforementioned programs, TSFs are also used to support trauma care, primary care, faculty education, facility retention and pilot funding. Dr. Larson stressed the importance of pilot funding as a primary mechanism for obtaining federal support money. Pilot funding returns \$8.00 to \$20.00 per each \$1.00 invested. (For more information regarding pilot funding, see slides 19 through 21 of the handout, marked as agenda item 1.) Dr. Larson concluded his presentation with an overview of the types and number of research projects taking place in select New Mexico counties.

## **Questions and Comments**

Several committee members expressed support for UNM HSC and voiced their desire to continue seeing the HSC receive TSFs. There was discussion regarding a former bill that would have seen \$50 million returned to the Tobacco Settlement Permanent Fund from the general fund; this money would have been used to ensure that programs like those at UNM HSC continue to receive funding in the future. A committee member stated that he plans to introduce the same bill in the upcoming legislative session.

A committee member asked if Dr. Larson had ever given a similar presentation to the Legislative Health and Human Services Committee (LHHS) or Legislative Finance Committee (LFC) specifically detailing how TSFs are used by UNM HSC. The committee member stated that it is important for the LHHS and LFC to hear the information that Dr. Larson presented and that a presentation could go a long way toward ensuring that TSFs would be allocated to UNM HSC in the future. Dr. Larson stated that he has given presentations to the LHHS and LFC in the past, and he would be willing to give presentations to those committees in the future, if invited.

Another legislator remarked on how TSF money is allocated at UNM HSC for purposes of commercialization and technology start-ups. The legislator specifically mentioned the Project

ECHO program. The legislator stated that it is important for New Mexicans to know that funds are being distributed throughout New Mexico, not just in Albuquerque.

A committee member asked about the level of collaboration between UNM HSC and the pediatric pulmonology team established in the 1980s. The partnership was formed to ensure medical and research outreach throughout the state. Dr. Larson stated that Project ECHO is the most prominent program operated through the HSC and that it has a statewide footprint. In this project, UNM HSC experts consult with local practitioners so that patients can be treated in their communities. Data published in the *New England Journal of Medicine* about the findings from Project ECHO demonstrate that treating patients in their communities is just as effective as treating them in Albuquerque. Project ECHO keeps primary care physicians involved and results in great cost savings and convenience for patients. This program is being replicated in many other states and foreign countries. Dr. Larson stated that an additional statewide program treating pediatric asthma has been very successful and is one of UNM HSC's largest clinical trials. In addition to bringing treatment to patients in their communities, the program's collaboration with businesses has positively affected New Mexico's economy. Dr. Larson informed the committee that more than 1,200 sustainable green jobs have been created out of private-public partnerships. Of these, approximately 90% are in Bernalillo County or contiguous counties. Dr. Larson told the committee that New Mexico State University in Las Cruces has more of an impact in the southern portion of the state than UNM.

Other legislators commented that Project ECHO and the pediatric asthma project should be brought to the attention of the LHHS and LFC. The legislators agreed that UNM HSC's programs are medically and economically beneficial, and if they are not promoted, others will think the tobacco funds should be used for other purposes. Legislators agreed that there needs to be greater advocacy on the part of committee members and communication with those who sit on the finance committees to protect the tobacco funds.

### **UNM Cancer Center Update**

Dr. Cheryl Willman, professor of pathology and internal medicine and director and chief executive officer of the UNM Cancer Center, began her presentation by sharing the mission and goals of the cancer center with the committee. She stated that the cancer center has an ethical imperative to ensure that all New Mexicans have access to state-of-the-art cancer treatment and that they benefit from advances in cancer research. Dr. Willman informed the committee of the cancer center's accomplishments, including achieving National Cancer Institute (NCI) designation in 2005. NCI designations are reviewed every five years. In 2010, the cancer center's NCI designation was successfully renewed. The center received an "Excellent/ Outstanding" rating. Funds from the NCI at the National Institutes of Health are the major source of funding for research, community programs and new cancer treatments at the UNM Cancer Center. (Please refer to slide 3 of the handout, marked as agenda item 2, for more information.) The UNM Cancer Center is New Mexico's official cancer center and the only NCI- designated Cancer Center in the state. The UNM Cancer Center has received several national commendations for its work, including from The Joint Commission, the American College of Surgeons Commission on Cancer and the American Society of Clinical Oncology

Quality Oncology Practice Initiative. (Please refer to slide 5 of the handout, marked as agenda item 2, for more information.)

Dr. Willman stressed the positive health and economic impacts of the UNM Cancer Center for New Mexicans. The cancer center cares for over 50% of adults and over 98% of children with cancer in New Mexico. Nearly 16,000 cancer patients, representing all New Mexico counties, were served at the UNM Cancer Center in fiscal year (FY) 2011. (Please refer to slide 4 of the handout, marked as agenda item 2, for more information.) The UNM Cancer Center is one of the few NCI centers in the nation providing care to the uninsured, and it accepts all forms of insurance. The UNM Cancer Center is working to reduce cancer health disparities in New Mexico's multiethnic and rural populations through community outreach, and it provides access to new cancer treatments through a statewide cancer clinical trials network called the New Mexico Cancer Care Alliance. Since 2005, community outreach efforts have successfully trained 75 Hispanic promotoras and 333 Native American community health workers and established the Native American Cancer Leadership Institute. These efforts have resulted in development and implementation of RIOS Net, Project ECHO and Project HERO. (Please refer to slide 8 of the handout, marked as agenda item 2, for more information.)

Dr. Willman told the committee that the UNM Cancer Center is an economic asset to the state. She said that the Cancer Center is one of the best in the nation because it strives to recruit and hire outstanding faculty members. She informed committee members that four new employees are scheduled to join the staff soon in the areas of hematology/oncology research. The center employs 41 faculty members and has filed 106 patents. Sixty-two patents have been awarded. Seven new start-up companies have formed, stemming directly from UNM Cancer Center research projects. (Please refer to slide 5 of the handout marked as agenda item 2, for more information.)

Dr. Willman concluded her presentation with a brief discussion of House Bill (HB) 315 (2012) — lung cancer research. She informed the committee that this bill was passed and signed into law in the 2012 regular session. It appropriated \$1 million from the Tobacco Settlement Program Fund (TSPF) to the Board of Regents of UNM for FY 2013 to conduct lung cancer research. She informed the committee that the UNM Cancer Center has not received these funds. (Please refer to slides 12 and 13 of the handout, marked as agenda item 2, for more information.)

### **Questions and Comments**

A committee member asked whether the \$1 million appropriated in HB 315 came from TSFs. Dr. Willman told the committee that the bill said that the funds should come from the TSPF without specification. However, UNM HSC became concerned that other UNM programs receiving tobacco funds would see funding cuts. The intention was to request an additional \$1 million for lung cancer research from the TSPF, not redirect \$1 million from other UNM HSC programs.

Another legislator said she heard that there is a shortage of health care workers in New Mexico, but Dr. Willman's presentation suggested otherwise. The legislator asked for

clarification. Dr. Willman told the committee that both statements are true. She explained that physicians who want to practice in an academic research center want different things than those who practice in the community. Research physicians receive approximately one-half of the compensation of community physicians. A highly paid cancer doctor at UNM HSC makes approximately \$350,000 per year; a private practice physician earns nearly twice as much annually. Dr. Willman informed the committee that, despite the difference in pay, UNM HSC has a relatively easy time recruiting because the center focuses on recruiting only those who have shown that they want to work in academia and research. Dr. Willman told the committee that, as an added incentive, UNM HSC gives new doctors great start-up packages, including some endowed chairs. Dr. Willman told the committee that the state does match some money for endowed chairs. While New Mexico is losing community physicians, it is not losing research physicians.

A committee member asked about the number of endowed chairs at UNM HSC. Dr. Willman said that there are six endowed chairs; there are also endowed professorships.

Another legislator commented that other universities have more than 100 endowed chairs. He stated that endowed chairs are important. He questioned whether New Mexico should be investing permanent funds at a 7% rate instead of in endowed chairs that generate jobs and economic activity in New Mexico.

A committee member asked about cancer treatment using telehealth. Dr. Willman stated that this is implemented through Project ECHO. Patients still have to go to UNM HSC for initial treatment and radiation, but they can receive other treatments in their communities. Dr. Willman informed the committee that the telehealth model reduces temporary housing and transportation costs that a patient would otherwise bear.

Another legislator asked about e-cigarettes. The presenter stated that e-cigarettes contain nicotine. There is a pending federal grant to study e-cigarettes. Many states are still deciding whether or not to regulate e-cigarettes.

A committee member asked if grants can be used to pay employee salaries. Dr. Willman stated that part of an employee's salary may be funded by a grant, but the amount that can be used for salaries is capped. Grants are used to help support staff salaries, not to fully fund staff.

### **Behavioral Health Telephone Call**

At the request of committee members, the committee listened to a behavioral health telephone call organized by the Centers for Medicare and Medicaid Services. As a result of a recent audit, services have been transferred to Arizona providers. The conversation was promoted as a way for consumers to report on the status of services under the providers that have been brought in to replace New Mexico providers.

### **New Mexico Poison and Drug Information Center**

Jess Benson, director, NMPDIC, shared poisoning facts with the committee. There are 2 million to 4 million unintentional poisonings per year in the United States, resulting in 438,000

hospitalizations and 41,600 deaths. Poisoning is the second-highest cause of unintentional injury deaths in the U.S. The annual cost of poisonings in the U.S. is \$4.4 billion. (Please refer to slide 2 of the handout, marked as agenda item 4, for more information.) Mr. Benson informed the committee that the mission of the NMPDIC is to "improve the health of New Mexicans by reducing morbidity and mortality associated with poisoning, adverse drug interactions and medication errors". NMPDIC service components include poison information, drug information and the Department of Health (DOH) All Hazards program. The NMPDIC is staffed by specially trained pharmacists and is accessible 24 hours a day, seven days a week, via a nationwide 800 number. Mr. Benson informed the committee of the national and statewide trends of poison-use programs. Nationally, use of these programs remained fairly steady between 2000 and 2007. Since 2007, there has been a decrease in the number of calls to poison control centers. (Please refer to slide 12 of the handout, marked as agenda item 4, for more information.) The decrease in calls to the NMPDIC has been offset by an increase in hospital calls to poison control centers. NMPDIC utilization shows that 91% of New Mexico counties have acceptable penetration rates.

Mr. Benson educated the committee on the positive impacts of services offered by the NMPDIC. He stated that the NMPDIC saves lives; reduces the cost of care for poisoned individuals; reduces the number and length of poison-related hospitalization stays; prevents poisonings, therapeutic errors and adverse drug events; and improves responses to medication. He told the committee that there are significant cost reductions associated with emergency room use because of the NMPDIC. For FY 2012-2013, the total cost of poisonings if the poison center were not operating would be an estimated \$26.4 million. Because of exposures managed at home, there was a total estimated cost savings of \$17.5 million. This resulted in an overall cost reduction of 66%. (Please refer to slide 7 of the handout, marked as agenda item 4, for more information). Mr. Benson stated that there were also cost reductions associated with minimizing inpatient hospital stays resulting from poisonings. When there was contact with the NMPDIC prior to hospitalization, hospital stays were reduced from approximately five days to two days. This resulted in an estimated savings of \$27.4 million for FY 2012-2013. (Please refer to slide 8 of the handout, marked as agenda item 4, for more information.)

Mr. Benson told the committee how TSFs were used in FY 2012-2013. TSFs amounted to \$590,300 for FY 2012-2013, which was approximately 27% of the funding that the NMPDIC received. Generally, 88% of NMPDIC expenses are for personnel, 3% for computer software, 2% for telephone services and 7% for other expenses (educational materials, travel expenses, office supplies, etc.). (Please refer to slides 10 and 11 of the handout, marked as agenda item 4, for more information.) In FY 2012-2013, TSFs provided direct support to 8,194 callers, 32 poison prevention programs, 15,100 pieces of poison prevention materials to schools, 10 public service announcements and poison center messages to 708,000 New Mexicans and reduced health care expenses by \$4.71 million.

### **Questions and Comments**

A legislator asked Mr. Benson for clarification on the amount in saved medical costs by calling the NMPDIC as opposed to visiting an emergency room in the case of a suspected or confirmed poisoning. Mr. Benson stated that calling the NMPDIC results in approximately \$27

million to \$30 million in avoided medical costs per year. He added that the NMPDIC is in the process of developing an application for use on mobile devices, which people can turn to for information instead of calling the NMPDIC. Mr. Benson said he envisions that the application will be a convenient place for people to get accurate information quickly and that the service will reach people who normally would not use land lines. He believes that the application will widen the NMPDIC client base and result in more people coming into contact with the NMPDIC in the future.

A committee member asked how many staff members work for the NMPDIC. Mr. Benson informed the committee that for the past four years, there has been only one full-time pharmaceutical staff member. There will be another staff member, specializing in toxicology, joining the program in September 2014.

### **Taxation of Cigarettes and Other Tobacco Products**

Shannon Baxter, compliance deputy director, Audit and Compliance Division, Taxation and Revenue Department (TRD), began her presentation to the committee by broadly discussing the Cigarette Tax Act and the Tobacco Products Tax Act. Ms. Baxter stated that the Cigarette Tax Act defines cigarettes and enumerates the excise tax rates for cigarettes. The act also lists exemptions and general licensing provisions. She informed the committee of statutory requirements for inspection of records related to the sale of tobacco, as well as mandatory reporting of cigarette sales to the TRD. The TRD enforces tobacco-related statutes through inspections, audits and seizure of contraband cigarettes. Contraband cigarettes include Master Settlement Agreement (MSA) noncompliant, unstamped and incorrectly stamped cigarettes. Further, the TRD works with the Attorney General's Office (AGO) to ensure compliance with the MSA through recordkeeping, audits and seizures. Additionally, the TRD works with the state fire marshal to report any non-fire safe cigarette sales with the federal Alcohol and Tobacco Tax and Trade Bureau and to report any "roll-your-own" manufacturing without a license, and it works to maintain tribal agreements for reciprocal cigarette taxation. Ms. Baxter told the committee that there are both civil and criminal penalties for selling contraband/counterfeit tobacco products, and penalties are assessed on a continuum scale. The penalty for selling contraband/counterfeit cigarettes ultimately depends on the volume of contraband/counterfeit products recovered.

Ms. Baxter concluded her presentation by talking to the committee about her role in the MSA arbitration. She has testified on behalf of the TRD and the State of New Mexico at hearings in Chicago regarding New Mexico cigarette tax enforcement efforts from 1986 to date. A decision by the arbitration board is still pending but is expected to be released in September.

### **Questions and Comments**

A committee member asked Ms. Baxter how the TRD cooperates with the AGO when there are confirmed instances of noncompliance. Ms. Baxter said that when the TRD finds that there is an issue with compliance, the TRD contacts the AGO and provides details about the compliance conflict. The AGO makes the decision whether or not to pursue the case further.

A legislator asked about contraband cigarettes found in New Mexico from other states and Indian reservations. Ms. Baxter stated that this information is difficult to quantify, in part because of internet sales of e-cigarettes. She stated that most of the contraband is found on the western and eastern New Mexico borders and on reservations.

A committee member asked about the difference between buying cigarettes on the reservation versus elsewhere in New Mexico. Ms. Baxter stated that tribal tax per pack of cigarettes is \$0.75, while New Mexico tax per pack of cigarettes is \$1.60. The tax paid on cigarettes on tribal land remains with the tribes. While the tax for buying cigarettes on reservations is less than buying cigarettes elsewhere, the presence of a tax does help to "level the playing field" for cigarette distributors. Only the Navajo Nation does not have a cigarette tax. The committee member requested a comparison between the New Mexico cigarette tax and the cigarette taxes of other states.

A legislator asked what other states are doing regarding e-cigarettes. Ms. Baxter stated that Minnesota taxes nicotine, so there is a tax on e-cigarettes. Other states are waiting to see what the federal Food and Drug Administration decides regarding regulation of e-cigarettes. Ms. Baxter added that most cigarette manufacturers see the benefits of the nonregulation of e-cigarettes, and so they are getting involved in this business.

A committee member said he has noticed that e-cigarette advertising links e-cigarettes with youth and freedom, and he questioned whether there has been discussion about this in other states' tax departments. Ms. Baxter said that there is no age limit for purchasing e-cigarettes. Other states have imposed laws requiring age limits for the purchase of e-cigarettes. The DOH has been considering regulations to address e-cigarettes.

A legislator stated that there have been many requests from various organizations within the state that want TSF money. The legislator asked whether the TRD has seen any "red flags" with how some legislators want to spend the funds. Ms. Baxter stated that she was unaware of any funding restrictions. She added that the TRD looks at how the funds are collected with respect to the MSA and not at how the funds are spent. Another legislator acknowledged that there is a statute that defines how the TSFs can be spent but conceded that there are very few restrictions.

A committee member asked if the AGO is concerned about how the TSFs are spent or how other states spend their TSFs. Ms. Baxter stated that the AGO may be keeping an eye on what other states are doing with tobacco funds, but the AGO's focus is mostly on protecting New Mexico's entitlement to the payments.

A legislator asked for a succinct summary of the reason for the MSA arbitration. Ari Biernoff, assistant attorney general, Litigation Division, AGO, stated that the question was whether New Mexico was fulfilling its obligations to assess escrow from nonparticipating manufacturers to the MSA.

There was discussion about Ms. Baxter's testimony at the arbitration hearing. Ms. Baxter said that it was her opinion that the state presented a great case.

### **Pediatric Oncology**

Dr. John F. Kuttesh, Jr., Ph.D., chief, Division of Pediatric Hematology/Oncology, UNM Children's Hospital, gave a presentation to the committee on pediatric oncology. He shared statistics on the prevalence of childhood cancer in the United States: 12,400 children and adolescents (and their families) are diagnosed with cancer per year; one of every 500 young adults is a childhood cancer survivor; cancer is the leading cause of death by disease in children and adolescents; the causes of most pediatric cancers remain a mystery and cannot be prevented; there is a 100% socioeconomic and psychosocial impact on the family and communities of children and adolescents diagnosed with cancer; the incidence of childhood cancer is 17 in 100,000; and survival rates for various types of cancers has dramatically increased since the mid-1970s. (Please refer to slides 2 and 3 of the handout, marked as agenda item 6, for more information.) Dr. Kuttesh informed the committee that increases in survival rates can be attributed, in part, to sub-specialization, an emerging multidisciplinary care approach and collaboration between children's oncology groups. Challenges to care include immediate and long-term complications, including familial stress, social stigma, neurological/learning disabilities and secondary cancers. Dr. Kuttesh discussed what UNM is doing to meet these challenges. He told the committee that the mission of UNM is "to decrease the burden of childhood cancer in children and families of New Mexico through clinical service, research and education". (Please refer to slides 6 through 15 of the handout, marked as agenda item 6, for more information.)

UNM Children's Hospital has a medium-sized cancer program featuring pediatric specialists and is the only tertiary care provider of oncology services for infants, children and adolescents in New Mexico. Specialists work with patients from diagnosis through survival. The hospital features a multidisciplinary care approach, combining the resources of a comprehensive children's hospital with the resources of a comprehensive Cancer Center, and it features a hospice program. The Mariposa program is composed of a team of highly trained professionals and offers the only pediatric palliative care and hospice resource in New Mexico. Mariposa offers comprehensive, compassionate care for infants, children and adolescents with many life-limiting conditions, not just cancer. This program emphasizes quality of life rather than length of life, and it supports the entire family.

UNM Children's Hospital is home to nationally recognized investigators working in the areas of brain tumors, experimental therapies and leukemia research. The Children's Oncology Group at UNM has over 90% of its eligible patients enrolled in NCI-approved therapeutic trials, 65 open research studies and cancer-control research studies.

Since 2012, 1,316 medical students and residents have engaged in clinics, inpatient student lectures, boards, rounds, conferences, student teaching and fellowship activities in pediatric hematology/oncology. The children's hospital has engaged in outreach through the YES Clinic. The clinic is a place for childhood cancer survivors of all ages. It provides

multidisciplinary follow-up for nearly 500 survivors of pediatric malignancies. YES Clinic programming includes health assessments and screening, a school re-entry program, a tobacco-use screening and cessation program and a young adult transition program.

Dr. Kuttesh concluded his presentation by informing committee members how TSFs are used to support UNM Children's Hospital. He stated that TSFs support the mission of UNM Children's Hospital by supporting access to the best therapies available in the world to improve outcomes for children diagnosed with cancer. TSFs also support survivorship, education and outreach efforts. (Please refer to slide 16 of the handout, marked as agenda item 6, for more information.)

### **Questions and Comments**

A committee member asked Dr. Kuttesh to elaborate on the reported 40% increase in the cancer survival rate between the mid-1970s and early 2000s and if the incidence of cancer is greater or less than in the past. Dr. Kuttesh stated that there has been an increase in the incidence of cancer; however, the increase may be due to an increase in data collection. There is a national health center registry to which UNM contributes data. The current rate of cancer for children under the age of 14 is 18 in 100,000. Dr. Kuttesh stated that there are different cancer rates in different ethnic groups. Higher rates stem from difficulties surrounding access to care and social stigma. For example, some types of leukemia are difficult to treat in Hispanic children, but not in Native American children.

A legislator commented on the 20% mortality rate reported in the presentation and asked Dr. Kuttesh how New Mexico's cancer mortality rate compares with other states. Dr. Kuttesh stated that New Mexico cancer mortality rates are similar to other states, with variations depending on disease and patient characteristics. Leukemia outcomes are similar to the national rates.

A committee member asked if there are any New Mexico counties that have outrageous rates of cancer. Dr. Kuttesh stated that the pool for this type of research in New Mexico is very small, so that type of information is difficult to quantify.

A legislator asked whether a child has to go through UNM HSC for rehabilitation if that child has to have an amputation stemming from cancer complications. Dr. Kuttesh said yes. He added that it is important to note that fewer children are going through amputations now than in the past. UNM HSC utilizes its resources and networks to perform limb salvages instead of amputations.

Several legislators expressed interest in a recent court decision regarding organ donation for transplants in children. Dr. Kuttesh stated that it is difficult to quantify what constitutes need, priority and risk for children receiving adult organs. Committee members agreed that in light of the court decision, there is a new national standard for organ donation for transplants for children, and they acknowledged that New Mexico has an overabundance of organs.

Another committee member commented on the screenings for smoking in the YES Clinic. Dr. Kuttesh stated that the program works primarily with adolescents, so this type of screening is necessary and expected. The program also screens family members for smoking.

A legislator asked about the length of time it takes for child cancer patients to see a doctor in the case of an emergency when they are in their home communities. Dr. Kuttesh stated that he, and most doctors, will try to see the child within 24 hours. In emergencies, the children's hospital works with the local emergency room to coordinate care until the child can be transferred to Albuquerque.

A committee member asked about how budget cuts affect matching funds for federal grants and the creation of jobs at UNM Children's Hospital and the UNM Cancer Center. The member added that investing in health is good economic and socioeconomic policy. Dr. Kuttesh responded that a sick child means that parents cannot work, so there are fewer economic opportunities for the family, and the economy suffers. There is an economic impact on the family and the community.

Committee members asked Dr. Kuttesh if he has seen any impact from Obamacare. Dr. Kuttesh stated that he serves a very poor population, so there is a high rate of unreimbursed care. Funding for child health is different from funding for adults. Having insurance through Obamacare helps families. He stated that a patient with no money and no insurance is often in better shape than a working family because a patient qualifies for more assistance. Co-payments for care often cost more than a house payment. Dr. Kuttesh stated that he is salaried and works at the university to do research and help others, not to make a lot of money. He said that Obamacare will help families, that it will help working families to have smaller co-pays and that it will help 33% to 40% of New Mexico families.

A legislator asked Dr. Kuttesh to talk about how much education a person needs to hold a position similar to his. Dr. Kuttesh told the committee that an individual would need four years of undergraduate education, four years of medical school and then specialization. Specialization time frames vary. Education is approximately three years for pediatrics, followed by three to four years for hematology; surgical specialization requires an eight-year to 10-year residency. In total, an orthopedic surgeon has more than 30 years of education.

A motion by Senator McSorley to send a letter to the LFC and the LHHS to have UNM HSC make presentations to the committees was seconded by Senator Torracco and unanimously approved.

### **Public Comment**

Jane Larson, executive director of Native American Professional Parent Resources (NAPPR), spoke on behalf of NAPPR. She informed the committee that NAPPR is a program supported, in part, by TSFs. The program empowers, educates and provides supportive services to build healthy Native American children and families, and it partners with the DOH's Family Infant Toddler (FIT) program and the March of Dimes. Ms. Larson apprised the committee of a study from the March of Dimes program showing that maternal smoking causes birth defects and

can cause genetic mutations that can produce third-generation birth defects. NAPPR partners with the FIT program to provide services to children with disabilities associated with maternal tobacco use. Ms. Larson told the committee that while the program has been repeatedly recognized for its work, it has been seriously underfunded. Ms. Larson urged the committee to allocate funding for the FIT program in the next fiscal year.

Jim Copeland, executive director of Alta Mira Specialized Family Services, spoke to the committee advocating increased funding for the FIT program in the next fiscal year. He stated that the program serves nearly 1,000 children in Bernalillo County. In the last year, the program provided over 5,000 hours of therapy and 5,500 hours of developmental instruction. He stated that providers are being paid at 2003 rates. Mr. Copeland informed the committee that the program was forced into overspending its budget by \$4 million because of the entitlement incorporated into FIT programming. He stated that the FIT program is qualified to receive TSFs because it provides education and health services.

Anna Otero Hatanaka spoke in support of the FIT program. She stated that it is "the gem" of the DOH. Ms. Otero Hatanaka informed the committee that, per federal law, anytime there is a child involved where there is substantiation of abuse, neglect or exploitation, the family is automatically referred for assessment. She also stated that the FIT program is fiscally sound; the return on investment is huge. Ms. Otero Hatanaka cited the budget of FIT as being deficient. She said that it is difficult for FIT-related agencies to recruit staff because they are competing with universities and health systems. To combat this, provider rates must be increased. The DOH needs a supplemental appropriation for the FIT program because there is no waiting list to receive services.

### **Approval of Minutes**

A motion by Representative Chasey to approve the minutes of the July 29, 2013 meeting was seconded by Representative Trujillo and unanimously approved.

### **Adjourn**

The meeting adjourned at 3:45 p.m., at which time staff and committee members toured the UNM Cancer Center.

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

**October 30, 2013  
Room 321, State Capitol  
Santa Fe**

The fourth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) for the 2013 interim was called to order by Senator Cisco McSorley, co-chair, on Wednesday, October 30, 2013, at 10:10 a.m. in Room 321 of the State Capitol in Santa Fe.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. Elizabeth "Liz" Thomson, Co-Chair  
Rep. Gail Chasey  
Sen. John C. Ryan  
Rep. Monica Youngblood

**Absent**

Sen. John Arthur Smith

**Advisory Members**

Rep. Paul C. Bandy  
Rep. Kelly K. Fajardo  
Rep. Jim R. Trujillo

Sen. Linda M. Lopez  
Sen. Mary Kay Papen  
Sen. Lisa A. Torracco

**Staff**

Shawn Mathis, Legislative Council Service (LCS)  
Jennifer Dana, LCS  
Branden Ibarra, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of all handouts are in the meeting file.

**Wednesday, October 30**

**Call to Order**

Senator McSorley called the meeting to order and welcomed the committee members, staff, presenters and audience members to the meeting. Upon his request, committee members and staff then introduced themselves.

## **Approval of Minutes of August 28, 2013 Meeting**

A motion was made and seconded, and the minutes from the August 28, 2013 meeting were unanimously approved.

### **Indian Affairs Department**

Arthur P. Allison, secretary of Indian affairs, Duane Duffy, deputy secretary of Indian affairs, and Allie Moore, tobacco program coordinator, Indian Affairs Department (IAD), presented to the committee a performance report on the 2012-2013 tobacco cessation and prevention program operated under the IAD. Secretary Allison shared the program vision and goals with the committee. Ms. Moore then provided an overview of the funding focus of the program, including the grant application and award process. Ms. Moore told the committee that the IAD received 12 grant proposals totaling \$492,687 and awarded a total of six grants, amounting to \$253,257, to tribal and community-based organizations for the purpose of delivering tobacco cessation and prevention services to Native Americans in New Mexico. Funds were distributed accordingly across all programs: prevention (56%); cessation (35%); administration (8%); and policy (1%). The funded programs for the 2012-2013 year were:

- Albuquerque Indian Center, \$60,000;
- Pueblo of San Ildefonso, \$55,000;
- People Living Through Cancer, \$49,000;
- Pueblo of Laguna, \$40,000;
- Pueblo of Pojoaque, \$30,000; and
- Keres Consulting, Inc., \$19,257.

Ms. Moore shared notable achievements of the funded programs for the 2012-2013 year, which included achievements in the areas of cessation, policy and advocacy, tobacco prevention, collaboration and capacity building. Additionally, IAD programs directly affected 31% of New Mexico Indian nations, tribes and pueblos; placed 100% focus on cultural preservation; placed 100% emphasis on reaching disparate populations; and directly served more than 3,000 individuals.

Ms. Moore told the committee that the IAD has identified areas for improvement regarding the grant award process; Department of Finance and Administration expense limitations; and the request for payment process for grantees. To address these issues, Ms. Moore said that the IAD will:

- collaborate with the Department of Health's (DOH) New Mexico Tobacco Use Prevention and Control program;
- train grantees on the latest Centers for Disease Control and Prevention (CDC) best practices in tobacco control;
- identify funding that can fulfill the needs of all grant applicants; and
- watch closely the federal Food and Drug Administration's (FDA) and other states' decisions regarding electronic cigarettes (e-cigarettes) and vaporizers.

Members of the committee asked questions about and discussed:

- traditional versus cultural tobacco use in Indian nations, tribes and pueblos;
- conversations taking place to ban smoking in casinos;
- the lack of CDC best practices in tobacco control for Native American communities;
- actual funding needs for IAD tobacco cessation and prevention programs;
- the IAD tobacco cessation and prevention program 2013-2014 budget request; and
- improving the contract award process.

The committee requested that Ms. Moore write a letter to the committee containing the names of the 2012-2013 contract awardees; the rates of tobacco use among the New Mexico Native American population relative to the United States population, the United States Native American population and the New Mexico population; a breakdown of the cost to treat clients in the IAD tobacco cessation and prevention program; and a list of the Indian nations, tribes and pueblos in New Mexico that have permanent tobacco prevention and cessation programs.

The committee also requested that LCS staff research and draft legislation to ban e-cigarette sales to youth. The draft legislation will then be considered at the next meeting.

### **Electronic Cigarettes**

Ari Biernoff, assistant attorney general of the Litigation Division in the Office of the Attorney General (OAG), provided information about e-cigarettes. Mr. Biernoff explained that e-cigarettes are electronic inhalers meant to simulate tobacco smoking. They are operated by a small battery and use a heating element that vaporizes a liquid or gel solution. Some e-cigarette liquids and gels contain and release nicotine; others release flavor. Mr. Biernoff told the committee that the benefits and risks of smoking e-cigarettes are still unclear, and laws that regulate the sale and use of e-cigarettes vary widely.

Mr. Biernoff told the committee that while most states are waiting for FDA guidance before imposing e-cigarette regulations, there have been some regulatory responses to e-cigarettes as follows:

- 20 states have restrictions on youth access to e-cigarettes and vaporizers;
- two states regulate e-cigarettes as "other tobacco products"; and
- one state imposes excise taxes on the purchase of e-cigarettes.

Mr. Biernoff urged that the legislature consider both what is known and unknown about e-cigarettes and the e-cigarette market when considering related legislation. It is known that:

- the market for e-cigarettes and vaporizers is growing, netting approximately \$300 million in 2011, \$2 billion in 2013 and an estimated \$3 billion to \$5 billion in the future;
- a growing number of tobacco companies are investing in the e-cigarette market;
- three e-cigarette companies control approximately 85% of the e-cigarette market; and
- a CDC study shows that one in 10 students in the United States has tried e-cigarettes.

Unknown information includes:

- the sale and usage rates of e-cigarettes and vaporizers in New Mexico;
- the contents of e-cigarette liquid and gel solutions; and
- the long-term risks and consequences of using e-cigarettes.

Members of the committee asked questions about and discussed:

- the reasons for using e-cigarettes and vaporizers;
- the cost to purchase e-cigarettes and "cartridges";
- the addictive nature of e-cigarettes;
- the use of e-cigarette and vaporizer devices to partake of illicit substances;
- data collection on the manufacture and sale of e-cigarettes;
- internet sales of e-cigarettes;
- methods to regulate and/or restrict access to e-cigarettes; and
- taxation of e-cigarettes.

### **Master Settlement Agreement Arbitration Decision**

Mr. Biernoff explained the decision by the Master Settlement Agreement (MSA) arbitration panel and outlined the implications of the decision for New Mexico. Mr. Biernoff told the committee that the arbitration panel found that, in 2003, New Mexico was not diligent in its enforcement of the "Qualifying Statute" to "level the playing field" by imposing payment obligations upon nonparticipating manufacturers (NPMs) similar to those of participating manufacturers pursuant to the MSA, thereby neutralizing the "MSA-related cost disadvantage imposed on" participating manufacturers. Mr. Biernoff explained that the arbitration panel considered a number of factors in reaching its determination on diligent enforcement, including: excise tax collection rate; lawsuits filed against noncompliant NPMs; documentation kept by the state to demonstrate diligence; resources allocated to enforcement; preventing noncompliant NPMs from future sales; legislation enacted; actions of short legislation; efforts to keep abreast of the National Association of Attorneys General; and enforcement efforts of other states.

Mr. Biernoff explained that, as a result of the decision, New Mexico will see a reduction in its annual payment of approximately \$39 million. He told the committee that there are few avenues to challenge the arbitration decision, but the OAG has filed a proceeding to challenge the way the amount of the penalty is calculated and is seeking to reduce the penalty. If the OAG is successful in challenging the amount of the penalty, Mr. Biernoff estimates that the April 2014 payment from the participating manufacturers would be reduced by approximately \$12 million. If the OAG is unsuccessful, Mr. Biernoff estimates that the amount of the annual payment will be reduced by approximately \$24 million.

Mr. Biernoff emphasized that the arbitration decision was only applied to the year 2003. The participating manufacturers have formulated challenges to every year after 2003 and have them on file. These challenges will most likely be arbitrated each year. Mr. Biernoff stated that the 2003 arbitration decision is not binding or precedential on subsequent arbitrations of challenges for later years, so it is possible that different decisions might be reached every year. Additionally, Mr. Biernoff told the committee that New Mexico's system of enforcement of the qualifying statute did not substantially change for several years after 2003. Accordingly, the

tobacco settlement payment could be reduced for a number of years in the event of future adverse arbitration decisions.

Members of the committee asked questions about and discussed:

- the motion filed in state court to modify the arbitration award;
- the possibility of joining the settlement with participating manufacturers;
- New Mexico's 2003 compliance rate;
- lawsuits filed against noncompliant NPMs; and
- the roles and respective responsibilities of the OAG, the Taxation and Revenue Department and the legislature in securing positive future arbitration decisions.

### **Legislative Finance Committee (LFC) Appropriations Considerations**

David Abbey, director of the LFC, taking into consideration the recent MSA arbitration decision and possible future adverse decisions against New Mexico, shared appropriation concerns on behalf of the LFC. Mr. Abbey urged the committee to consider the following:

- the DFA's interpretation of the language in Senate Bill 113 (2013) is that the transfer to the Lottery Tuition Fund will occur after the spring 2014 distribution is received;
- additional appropriations beyond the standard funded programs (the DOH, the IAD, the Human Services Department and the University of New Mexico) are probably not warranted, given the uncertainty over distributions; and
- given the uncertainty about distributions, the legislature may want to reconsider continuing a 50% distribution of settlement revenue to the Tobacco Settlement Permanent Fund (TSPF).

Members of the committee asked questions about and discussed:

- the settlement with participating manufacturers to ensure a steady income stream of MSA payments;
- the reintroduction of House Bill 412 from the 2013 legislative session; and
- growing the corpus of the TSPF to allow for future distributions at current levels without disruption.

### **TSPF Asset Allocation**

Steven Moise, state investment officer for the State Investment Council (SIC), and Vince Smith, deputy state investment officer with the SIC, shared the current TSPF investment asset allocation and presented an alternative asset allocation plan for the committee's consideration. Mr. Moise told the committee that the TSPF has assets totaling \$178.6 million. In June 2013, \$39.3 million was distributed, pursuant to Senate Bill 113, to tobacco education and health programs (50%), the Lottery Tuition Fund (25%) and early childhood education programs (25%).

Mr. Moise reported the current fund investment asset allocation: equities (67%); core bonds (23%); and absolute return (10%). Mr. Moise proposed a new asset allocation plan for the

committee's consideration. Under the new asset allocation plan, funds would be invested accordingly: equities (55%); core bonds (15%); absolute return (10%); private equity (10%); and real estate (10%). Mr. Moise told the committee that the proposed investment plan: would yield an increased 0.68% expected return on investment (ROI); has a lower liquidity metric; and has 2% decreased probability of a one-year negative ROI. Assuming zero net contributions to the permanent fund and fiftieth percentile returns, Mr. Moise told the committee that 20-year projections predict that changing to the proposed asset allocation plan could result in a net value of \$394.5 million for the TSPF, versus a value of \$340.6 million if the asset allocation remains the same.

Mr. Moise told the committee that the SIC has several concerns regarding the proposed asset allocation plan:

- the proposed asset allocation plan gives up some liquidity in exchange for improved diversification and performance;
- should the TSPF be called on as a reserve fund by the legislature, there would be a larger financial impact on the fund; and
- the SIC is reluctant to implement the proposed asset allocation plan without reassurance that the TSPF corpus will not be utilized to address any shortfalls caused by the recent MSA arbitration decision.

Members of the committee asked questions about and discussed:

- a time line for approving the proposed asset allocation plan;
- protecting the TSPF from improper use; and
- the possibility of constitutionally protecting the TSPF.

### **Public Comment**

Lacey Daniell, American Cancer Society Cancer Action Network, spoke to the committee on behalf of her family and community. Ms. Daniell told the committee that her brother passed away at the age of 32 of tobacco-induced cancer, leaving behind his wife and children. She stated that tobacco is the leading cause of preventable cancer and requested that the committee sustain funding to tobacco prevention and cessation programs to reduce the costs of smoking-related illnesses to New Mexicans and the state.

Maria Otero, Nuestra Luz, stated that Nuestra Luz works for tobacco prevention, cessation and control statewide. Ms. Otero told the committee that more funds spent on tobacco prevention and cessation will result in a greater impact in New Mexico communities. She urged the committee to continue funding tobacco prevention and cessation programs.

### **Adjournment**

There being no further business before the committee, the fourth meeting of the TSROC for the 2013 interim adjourned at 3:00 p.m.

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

**November 20, 2013  
Room 321, State Capitol  
Santa Fe**

The fifth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on Wednesday, November 20, 2013, at 10:15 a.m. in Room 321 of the State Capitol in Santa Fe.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. Elizabeth "Liz" Thomson, Co-Chair  
Rep. Gail Chasey

**Absent**

Sen. John C. Ryan  
Sen. John Arthur Smith  
Rep. Monica Youngblood

**Advisory Members**

Rep. Paul C. Bandy\*  
Rep. Kelly K. Fajardo  
Sen. Mary Kay Papen  
Sen. Lisa A. Torraco

Sen. Linda M. Lopez  
Rep. Jim R. Trujillo

\*Representative Bandy was appointed as a voting member to achieve a quorum for this meeting only.

**Staff**

Shawn Mathis, Staff Attorney, Legislative Council Service (LCS)  
Jennifer Dana, LCS  
Branden Ibarra, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of all handouts are in the meeting file.

**Wednesday, November 20**

**Call to Order**

Representative Thomson called the meeting to order and welcomed the committee members, staff, presenters and audience members to the meeting. Upon her request, committee members and staff then introduced themselves.

## Health Impacts of Electronic Cigarettes

Dr. Dona Upson, Internal Medicine Division of Pulmonary, Critical Care and Sleep Medicine, University of New Mexico, and tobacco dependence specialist with the New Mexico VA Health Care System, spoke to the committee about the health implications for adults and youths of using electronic cigarettes (e-cigarettes), e-cigarette advertising and future regulation of e-cigarettes. Dr. Upson made the following points about research relating to e-cigarettes:

- While there have been few studies on the health impacts of e-cigarette use, data suggest that e-cigarettes have negative short- and long-term implications for lung health and lung function in adults and youths.
- Health risks for youths stem largely from the presence of nicotine and/or other glycol derivatives present in e-cigarette cartridges. Nicotine has a negative impact on adolescent brain development and the development of the fetal brain.
- Some data suggest that e-cigarettes are a "gateway drug" and that many users become dual users of e-cigarettes and conventional cigarettes.
- There are some data demonstrating that e-cigarettes may be effective in reducing conventional cigarette consumption.
- There are no data demonstrating the efficacy of e-cigarettes as a tool to achieve smoking cessation.

Dr. Upson advised that e-cigarettes are not regulated by the federal government and that marketing of e-cigarettes is directed heavily toward youths. Dr. Upson explained how e-cigarette design and advertising target youth audiences:

- e-cigarette flavors include peach, orange, cherry, watermelon, grape and pina colada;
- e-cigarette batteries can be purchased in a variety of colors, patterns and custom designs; and
- e-cigarette video advertisements emphasize the "freedom" associated with smoking e-cigarettes versus smoking conventional cigarettes.

Dr. Upson also provided information on the expansion of the e-cigarette market, including increases in advertising to market e-cigarettes; the percentage of adult smokers trying e-cigarettes for the purpose of smoking cessation; and the e-cigarette sales in key markets.

Dr. Upson told the committee that the future of e-cigarettes is uncertain. There is a need for research and evaluation of the efficacy and health implications of e-cigarettes to determine if they reduce or reinforce smoking behaviors. Dr. Upson, on behalf of the American Thoracic Society, recommended that e-cigarettes be subject to the same regulations as conventional cigarettes.

Members of the committee asked questions about and discussed:

- the addictive nature of e-cigarettes versus conventional cigarettes;
- the use of e-cigarettes for purposes of smoking cessation;
- the presence of carcinogens and other toxins in e-cigarettes;
- the fiscal impact of e-cigarette health-related illnesses to New Mexico;
- the possibility of collecting excise taxes on sales of e-cigarettes in New Mexico;
- the possibility of tracking sales of e-cigarettes in New Mexico;

- the possibility of imposing age restrictions for purchasing e-cigarettes and related products in New Mexico;
- the anticipated time line for the federal Food and Drug Administration's regulation of e-cigarettes;
- other states and European regulations of e-cigarettes; and
- the cost of e-cigarettes.

### **American Lung Association Tobacco Report Card**

Christian Stumpf, regional government relations director for the American Lung Association (ALA), presented the New Mexico Tobacco Report Card to the committee. Mr. Stumpf discussed the methods behind the grade calculations and illustrated how New Mexico tobacco policies compare with other states. Mr. Stumpf explained that the purpose of the tobacco report card is to convey complicated information in an easy-to-understand format and to assist in advancing tobacco control policy changes.

The ALA grades states in four areas: tobacco prevention and control program funding; smoke-free air laws; cigarette tax; and cessation coverage. Mr. Stumpf reviewed the grades New Mexico received in each of these areas:

- New Mexico received an "F" for tobacco prevention and control program funding; the state would need to allocate an additional \$4 million annually to receive a "D".
- New Mexico received an "A" for smoke-free air laws.
- New Mexico received a "C" for cigarette tax; the state would need to increase cigarette taxes by \$1.32 to receive an "A".
- New Mexico received a "C" for cessation coverage under health insurance policies; it is anticipated that, in 2014, New Mexico will receive a "B" for cessation coverage.

Members of the committee asked questions about and discussed:

- what other states are doing to incentivize insurance companies to provide more cessation assistance;
- past attempts to mandate private insurance coverage for cessation;
- the average number of attempts to quit smoking before successfully quitting;
- progress and barriers toward achieving the goal of ending tobacco use by 2020;
- increasing cigarette taxes; and
- potential ALA policies regarding e-cigarettes and marijuana.

### **Tobacco Settlement Permanent and Program Funds; Revenue Projections**

Greg Geisler, analyst for the Legislative Finance Committee (LFC), informed TSROC members of the LFC's fiscal year (FY) 2015 revenue projections for the Tobacco Settlement Program Fund and of agency appropriation requests for FY 2015. Mr. Geisler stated that the FY 2015 current revenue projection is for revenue to remain flat at approximately \$39.5 million. He added that it is too early to tell if the FY 2015 Master Settlement Agreement (MSA) distribution will be affected by another arbitration panel decision. Mr. Geisler advised the committee that, given the uncertainty over the size of future distributions, it would be prudent to not appropriate funds for programs beyond the 50% level specified in statute.

Mr. Geisler informed the committee that FY 2015 agency appropriation requests total approximately \$19.2 million. The largest agency requests are from the Human Services Department (\$9.2 million) and the Department of Health (\$6.8 million). Please refer to the handout marked as agenda item three to view specific FY 2015 agency appropriation requests.

**D** Members of the committee asked questions about and discussed:

- the difficulty of appropriating funds not yet received;
- the time line for the distribution of funds allocated in 2013 to the Children, Youth and Families Department's early childhood programs and to the lottery scholarship program; and
- recommending appropriations based on a percentage or set dollar amount.

### **Proposed Legislation from the Attorney General for the 2014 Legislative Session**

Ari Biernoff, assistant attorney general of the Litigation Division in the Office of the Attorney General (OAG), told the committee that he did not have any draft legislation from the OAG to present to the committee for endorsement at the time of his presentation. Mr. Biernoff stated that he would instead be providing an update on the actions taken by the OAG in response to the MSA arbitration panel's decision made in September 2013. Mr. Biernoff explained that, as a result of the decision, New Mexico will see a reduction in its annual payment. He told the committee that there are few avenues to challenge the arbitration decision, but the OAG has filed a proceeding to challenge the way the amount of the penalty is calculated and is seeking to reduce the penalty. If the OAG is successful in challenging the amount of the penalty, Mr. Biernoff estimates that the April 2014 payment from the participating manufacturers would be reduced by approximately \$12 million. If the OAG is unsuccessful, Mr. Biernoff estimates that the amount of the annual payment will be reduced by approximately \$24 million.

Members of the committee asked questions about and discussed:

- the history of arbitration between New Mexico and tobacco companies;
- New Mexico's 2003 compliance rate;
- lawsuits filed against noncompliant nonparticipating manufacturers;
- other states' appeals of the arbitration panel's decision;
- the possibility of New Mexico appealing the arbitration panel's decision;
- the possibility of creating a working group consisting of representatives from the OAG, the Taxation and Revenue Department (TRD) and the legislature to better understand the reasoning behind the arbitration panel's decision and to strategize ways to secure positive future arbitration decisions; and
- the roles and respective responsibilities of the OAG, the TRD and the legislature in securing positive future arbitration decisions.

### **Committee Legislation**

Ms. Mathis presented three discussion drafts of bills to the committee for endorsement. Two of the bills relate to banning the sale of e-cigarettes to minors, and the third relates to the registration of sellers of e-cigarettes and retention of sales records. Please refer to the handout marked as agenda item seven to view the discussion drafts of the bills.

The committee voted unanimously to endorse a bill banning the sale of e-cigarettes to minors, with specific instructions to committee staff to add certain language.

Members of the committee asked questions about and discussed:

- D
- expanding the definition of e-cigarettes;
  - internet sales of e-cigarettes;
  - the sovereignty of tribes with respect to e-cigarette legislation; and
  - requesting an executive message from the governor to consider e-cigarette legislation during the 2014 legislative session.

### **Review of FY 2014 Program Funding Levels and FY 2015 Funding Recommendations**

Ms. Mathis directed the committee members' attention to the Tobacco Settlement Program Fund appropriations requests table in their committee folders. Please refer to the handout marked as agenda item eight to view agency appropriations requests.

R  
A motion was made, seconded and unanimously approved to recommend flat funding appropriations for FY 2015.

### **Approval of Minutes of October 30, 2013 Meeting**

A motion was made and seconded, and the minutes of the October 30, 2013 meeting were unanimously approved.

### **Adjournment**

A  
There being no further business before the committee, the fifth meeting of the TSROC for the 2013 interim adjourned at 3:50 p.m.