



NEW MEXICO LEGISLATURE

**TOBACCO SETTLEMENT  
REVENUE OVERSIGHT  
COMMITTEE**

2017 INTERIM FINAL REPORT

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# TABLE OF CONTENTS

INTERIM SUMMARY

WORK PLAN AND MEETING SCHEDULE

AGENDAS AND MINUTES

ENDORSED LEGISLATION AND APPROPRIATIONS



## INTERIM SUMMARY



## **Tobacco Settlement Revenue Oversight Committee 2017 Interim Summary**

New Mexico's Tobacco Settlement Permanent Fund (TS Permanent Fund) receives annual payments of approximately \$30 million to \$40 million as its share of payments made by tobacco product manufacturers to various states to settle litigation addressing state health care costs related to consuming tobacco products. Pursuant to Section 6-4-9 NMSA 1978, half of the annual tobacco settlement revenue is distributed to the Tobacco Settlement Program Fund (TS Program Fund), with the other half remaining in the TS Permanent Fund as a reserve fund.

The TS Program Fund, pursuant to Section 6-4-10 NMSA 1978, is used primarily for health and education purposes. Pursuant to Section 2-19-1 NMSA 1978, the Tobacco Settlement Revenue Oversight Committee (TSROC) is charged with monitoring the use of tobacco settlement revenues by evaluating programs receiving tobacco settlement funding and making recommendations to the New Mexico Legislative Council and the Legislative Finance Committee for program funding for the next fiscal year.

The TSROC requires current awardees to justify their requests for continued funding, and prospective awardees to justify their initial requests, by completing a tobacco settlement revenue funding request. Current funding recipients are the Department of Health, the Human Services Department, the Indian Affairs Department and the University of New Mexico Health Sciences Center. For fiscal year (FY) 2019, there were no requests from programs that are not presently receiving tobacco settlement funding.

### **The Tobacco Settlement Revenues**

In 1994, the attorneys general of 46 states, including New Mexico, filed suit against major tobacco companies for deceptive and fraudulent marketing, targeting children and conspiracy to conceal the health effects of smoking. The attorneys general argued that states should not be forced to pay the costs of treating smoking-related diseases and conditions such as lung cancer, heart disease, emphysema and low-birth-weight babies. The states sought recovery of Medicaid and other public health expenses incurred by the states in the treatment of smoking-related diseases and conditions. In November 1998, the states settled the lawsuit with the tobacco companies, which are referred to as "participating manufacturers" (PMs). The participating manufacturers were the largest tobacco companies in the country, but there are smaller tobacco companies that did not participate in the settlement. These companies are referred to as "nonparticipating manufacturers" (NPMs).

The document that sets out the agreement is called the "Master Settlement Agreement" (MSA). The MSA requires PMs to stop deceptive marketing of cigarettes, particularly to children, and to make payments to settling states in perpetuity to compensate for the increased costs to the states because of use of the tobacco companies' products. In exchange, states have given up any future claims against the PMs based on the tobacco companies' actions at issue in the settled lawsuits.

The PMs were concerned, however, that because of the payments the PMs had to make to the settling states, the NPMs would gain an unfair advantage in sales, leading to an increased market share for the NPMs and therefore a loss of market share to the PMs, as an unintended result of the settlement. To level the playing field between PMs and NPMs, the MSA provided that the annual payment amounts could be reduced if it could be shown that the PMs had lost market share to NPMs as a result of the settlement; these reductions are called "NPM adjustments".

The MSA allowed settling states to avoid NPM adjustments by: (1) passing model escrow statutes that neutralize the cost disadvantages that the PMs experience by requiring NPMs operating in the settling states to either join the MSA and comply with its terms or to establish an escrow account and make regular payments into that account; and (2) enforcing the escrow legislation. In the 1999 legislative session, almost immediately after the MSA was signed, the New Mexico Legislature enacted the model escrow statutes.

The annual calculation of the settlement payment to be made by each PM and the amount to be received by each settling state, including any NPM adjustments, is very complex, and the parties can dispute the calculations. Disputes are resolved by arbitration, and the arbitration decisions may be challenged in state court.

The Attorney General's Office manages enforcement of and compliance with the MSA and represents the state in any disputes. In 2006, the PMs disputed the 2003 settlement payment, resulting in withholding of the challenged amounts in the 2007 payment. The dispute was partially resolved in the state's favor in 2016, and the withheld sum, approximately \$14 million, was paid in 2017. The total 2017 payment was approximately \$54 million. The PMs have announced their intention to challenge every annual settlement payment calculation.

### **2017 Interim Funding Requests and Recommendations**

For FY 2019, funding requests rose slightly from the previous fiscal year. The Human Services Department requested the amount that Medicaid actually received from the tobacco settlement funds in the previous fiscal year; the Department of Health requested more funding for two of the four programs receiving tobacco settlement funding; and the University of New Mexico Health Sciences Center requested modest increases in funding for all of its programs to restore them to FY 2016 levels.

During the 2017 interim, the TSROC heard presentations on all of the funding requests. Each of the projects was explained in detail during the interim meetings; minutes for all meetings and handouts for all the presentations are available on the TSROC's page of the legislature's website.

The TSROC met on November 30, 2017, reviewed the funding requests and voted to recommend adoption of all funding requests as presented. A summary table of the funding requests and the tobacco settlement funding request forms for each item are attached.

The TSROC also suggested that, if the available settlement revenues are not exhausted by appropriations for the recommended funding requests, at least a substantial portion of any unappropriated revenues be appropriated to the Department of Health and the Indian Affairs Department for their tobacco cessation and prevention programs.

The TSROC also considered and voted to endorse two bills. One of the endorsed bills would increase the cigarette tax and tobacco products tax; include e-cigarettes in the scope of the Tobacco Products Tax Act; and distribute revenue from the tax increases to the Public School Fund for the state equalization guarantee distribution. The other endorsed bill would ban the sale of tobacco products, e-cigarettes and nicotine liquid containers to persons under 21 years of age. Copies of both bills are included in this report.



## WORK PLAN AND MEETING SCHEDULE



**2017 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. Joanne J. Ferrary

Sen. Sander Rue  
Sen. John Arthur Smith  
Rep. Monica Youngblood

**Advisory Members**

Rep. Gail Chasey  
Sen. Candace Gould  
Sen. Linda M. Lopez

Sen. Mary Kay Papen  
Rep. Jim R. Trujillo

**Work Plan**

The Tobacco Settlement Revenue Oversight Committee (TSROC) was established pursuant to Section 2-19-1 NMSA 1978. The committee will continue its statutory oversight duties for the programs that request and receive funding through the Tobacco Settlement Program Fund. The committee will also receive testimony regarding the balances in and projected revenues for both the Tobacco Settlement Program Fund and the Tobacco Settlement Permanent Fund.

During the 2017 interim, the TSROC proposes to:

- (1) review the status of the revenue for current and future fiscal years and reserves for the Tobacco Settlement Permanent Fund;
- (2) receive testimony regarding tobacco settlement-related issues, litigation and legislation;
- (3) receive testimony regarding the use of the appropriations from the Tobacco Settlement Program Fund by those programs recommended by the committee and funded by the legislature in prior years;
- (4) prepare recommendations to the Legislative Finance Committee for program funding levels for fiscal year 2019, based on the committee's program evaluation process; and
- (5) make findings and recommendations, including proposed legislation, available to the legislature as part of the TSROC's final report.

**Tobacco Settlement Revenue Oversight Committee  
2017 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
Monday, June 19	Santa Fe, Room 311, State Capitol
Friday, August 11	Santa Fe, Room 311, State Capitol
Tuesday, September 5	Albuquerque, UNM Cancer Center
Thursday, November 30	Santa Fe, Room 311, State Capitol

# AGENDAS AND MINUTES



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

**June 19, 2017  
State Capitol, Room 311  
Santa Fe**

**Monday, June 19**

- 1:30 p.m.           **Welcome and Introductions**  
—Senator Cisco McSorley, Co-Chair  
—Representative Elizabeth "Liz" Thomson, Co-Chair
- 1:45 p.m.       (1)   **Brief History of the Master Settlement Agreement in New Mexico**  
—Celia Ludi, Staff Attorney, Legislative Council Service (LCS)
- 2:00 p.m.       (2)   **Post-Session Update: Tobacco Settlement Permanent and Program Funds**  
—Ruby Ann Esquibel, Principal Fiscal Analyst, Legislative Finance Committee
- 2:30 p.m.       (3)   **Update on Master Settlement Agreement Litigation**  
—Ari Biernoff, Assistant Attorney General, Office of the Attorney General
- 3:15 p.m.       (4)   **Review and Adoption of 2017 Interim Work Plan and Meeting Schedule**  
—Celia Ludi, Staff Attorney, LCS
- 3:30 p.m.           **Public Comment**
- 3:45 p.m.           **Adjourn**



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

**June 19, 2017  
State Capitol, Room 311  
Santa Fe**

The first meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on June 19, 2017 at 1:35 p.m. in Room 311 of the State Capitol in Santa Fe.

**Present**

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

**Absent**

Rep. Joanne J. Ferrary  
Sen. John Arthur Smith

**Advisory Members**

Sen. Linda M. Lopez

Rep. Gail Chasey  
Sen. Candace Gould  
Sen. Mary Kay Papen  
Rep. Jim R. Trujillo

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Kathleen Dexter, Researcher, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are on the New Mexico Legislature website and in the meeting file.

**Monday, June 19**

**Brief History of the Master Settlement Agreement in New Mexico**

Ms. Ludi provided the committee with a history of the settlement between tobacco companies and states, known as the Master Settlement Agreement (MSA).

In 1998, New Mexico and 45 other states settled a lawsuit they initiated four years earlier against five major tobacco companies for, among other things, concealing the detrimental health

effects of tobacco use. The states argued that the companies should share with the states' Medicaid programs the cost of treating smoking-related diseases and conditions. The resulting MSA requires that the tobacco companies — referred to in the settlement as "participating manufacturers" (PMs) — cease all deceptive marketing of cigarettes, especially to children, and make compensatory payments to the states in perpetuity. The MSA also prohibits those states from making future claims against the PMs on the same issues. Four states are not part of the MSA but instead reached their own separate settlements with the PMs.

Under the MSA, New Mexico receives an annual settlement payment from the PMs based on their revenue from cigarette sales in the previous year. This payment is generally \$30 million to \$40 million per year and is deposited into the state's Tobacco Settlement Permanent Fund (permanent fund), which was created in 1999 along with the Tobacco Settlement Program Fund (program fund) and other statutes addressing the use and management of the revenues from the payments.

While the MSA does not prescribe or restrict the use of settlement funds, the legislature imposed a broadly worded statutory limit that directs these funds to "health and educational purposes". Each annual payment is deposited into the permanent fund, and then one-half is distributed to the program fund to be appropriated for health and educational purposes. The settlement funds have been used primarily for public health programs, research and teaching at the University of New Mexico (UNM) Health Sciences Center (HSC) and tobacco use prevention and cessation programs. In 2014, some of the settlement money went to the Children, Youth and Families Department for early childhood care and education programs, and some was used for legislative lottery tuition scholarships.

Because the permanent fund is also designated as a reserve fund, the money in it may be used to avoid unconstitutional deficit spending if the balance in the General Fund is not sufficient to meet appropriations authorized for a given fiscal year. The permanent fund has been used in this manner for seven of the past 10 fiscal years, including the current fiscal year.

### **Post-Session Update: Tobacco Settlement Permanent and Program Funds**

Ruby Ann Esquibel, principal fiscal analyst, Legislative Finance Committee (LFC), gave a presentation on revenue to and appropriations from the permanent fund and the program fund in the past three fiscal years.

Senate Bill 154 from the 2017 regular session, which was passed by both chambers and signed into law, appropriated the entire fiscal year (FY) 2018 tobacco settlement payment to the program fund instead of retaining one-half of the payment in the permanent fund. The ending balance of the permanent fund for FY 2018 is projected to be \$12 million, down from more than \$110 million two years earlier.

Total program fund appropriations for FY 2018 are \$39 million, an increase of \$2 million over FY 2017. Medicaid was the single largest recipient of tobacco settlement money, receiving

a total of \$29.3 million, including the entire \$2 million increase. Other entities that receive program fund appropriations are:

- the Indian Affairs Department, for tobacco use prevention and cessation programs;
- the Department of Health, for tobacco use prevention and cessation programs; diabetes prevention and control; human immunodeficiency virus and acquired immune deficiency syndrome, or HIV/AIDS, services; and breast and cervical cancer screening; and
- the UNM HSC, for instruction and general purposes; genomics and environmental health research; the New Mexico Poison and Drug Information Center; pediatric oncology; trauma specialty education; and pediatric specialty education.

On questioning, Ms. Esquibel and committee members addressed the following topics. They were joined by David Abbey, director, LFC, and Dawn Iglesias, economist, LFC, both of whom spoke from the audience on invitation of the chair.

***Permanent fund.*** The balance in the permanent fund was more than \$200 million four years ago, but the fund was swept in FY 2016 and legislation is in place to allow it to be swept again in FY 2017 and FY 2018 if necessary. While its status as a reserve fund means it is available for use to avoid deficit spending, it is considered a "fund of last resort". The current positive revenue outlook might mean there will be no need to use the permanent fund to shore up the General Fund in FY 2017 or FY 2018. An updated revenue projection will be released in August.

***FY 2017 MSA payments.*** The \$15 million increase in the settlement payment in FY 2017 over FY 2016 is due to additional money the state received as a result of a court decision on a challenge of an arbitration decision regarding the amount of the 2003 payment.

### **Update on MSA Litigation**

Ari Biernoff, assistant attorney general, gave a review and update on litigation since the MSA went into effect.

Mr. Biernoff explained that the PMs are the largest tobacco companies in the country, but there are smaller tobacco companies that do not participate in the settlement. These companies are referred to as "nonparticipating manufacturers" (NPMs).

The PMs were concerned that, because of the payments they had to make to the settling states, the NPMs would gain an unfair advantage in sales, leading to an increased market share for the NPMs and therefore a loss of market share to the PMs, as an unintended result of the settlement. To address that, the MSA provided that the annual payment amounts to a state could be reduced if it could be shown that the PMs had lost market share to NPMs as a result of the settlement. These payment reductions are called "NPM adjustments".

The MSA also allowed states to avoid NPM adjustments by passing model escrow statutes that require NPMs operating in the settling states to either join the MSA and comply with its terms or establish an escrow account and make regular payments into that account, and by diligently enforcing the escrow legislation.

The legislature enacted the model escrow statutes at the same time that it created the permanent fund and program fund. NPMs must make annual payments into escrow accounts in perpetuity; the payments for a given year will be returned to those NPMs after 25 years if no judgments are made against them in that time period.

The annual calculation of the settlement payment to be made by each PM and the amount to be received by each settling state, including any NPM adjustments, is very complex, and the parties can dispute the calculations, as well as whether the state has diligently enforced the escrow statutes. Those types of dispute are resolved by arbitration, and the arbitration decisions may be challenged in state court.

In connection with the 2003 payment to the states, the PMs disputed whether New Mexico and all of the other MSA states had diligently enforced their escrow statutes. New Mexico participated in an arbitration hearing to resolve that issue, a process that took many years. The PMs also challenged the state's recordkeeping regarding NPMs. In 2013, the arbitration panel issued a ruling against New Mexico. The state appealed the ruling in district court. The district court did not entirely reverse the arbitration panel's decision but ruled that the arbitrators had overstepped their authority by using their own formula for determining by how much New Mexico's payment should have been reduced, rather than applying the MSA. As a result of the district court's order, New Mexico received a one-time \$14.5 million payment in FY 2017 in addition to the state's annual MSA payment. The state has improved its sales recordkeeping since the issue was first raised.

The PMs notified the states that they intend to challenge the enforcement of the escrow statutes every year, including the 2004 payment. Some other states have entered into a "term sheet" agreement with the PMs to resolve their dispute for a fixed number of years in exchange for adopting significantly more burdensome enforcement obligations. Some of the remaining states voluntarily entered into a multiparty arbitration with the PMs to resolve that dispute, which is presently active. In the view of the Office of the Attorney General, New Mexico is entitled to a stand-alone arbitration and should not be required to resolve its dispute with the PMs in the multiparty arbitration. That matter is presently before the New Mexico Court of Appeals.

Arbitration is conducted by an arbitration panel. Under the MSA, an arbitration panel must consist of one member chosen by "each of the two sides" and a third member chosen by the other arbitrators. The panel considering the 2004 multiparty dispute includes four members, two of whom were chosen by the tobacco companies. New Mexico has appealed the membership of this panel as being contrary to the terms of the MSA and giving an unfair advantage to the companies. The 2004 matter is still in process and probably will not be resolved until after the

state receives its April 2018 settlement payment. The 2018 payment should be intact because adjudication of the 2004 dispute will not be completed by then; if the state loses and is required to absorb an NPM adjustment for 2004, that deduction will be reflected in the payment cycle immediately following that decision.

On questioning, Mr. Biernoff and committee members addressed the following topics.

***Cigarette sales on tribal lands.*** Responding to a committee member's question, Mr. Biernoff said that tobacco companies have argued that cigarette sales on tribal lands should be included in the enforcement of the escrow statutes. New Mexico's position is that it is not obligated to regulate sales on tribal lands because the MSA only requires escrow deposits for sales subject to state excise tax, and, under New Mexico law, tribal sales are not subject to state excise tax.

***Arbitration proceedings and costs.*** Mr. Biernoff related that while there is a three-person team within the Office of the Attorney General assigned to represent the state in all MSA litigation and arbitration, those staff also work on other matters. There is no provision in the MSA for the prevailing party to recover arbitration and litigation costs, so states shoulder those costs themselves. In addition to the salaries of tobacco project team members, states must pay for expert witnesses and contract attorneys when necessary. The Office of the Attorney General includes the cost of the tobacco project team in its budget, and its members are not solely engaged in tobacco settlement litigation. He noted that tobacco companies are in a much better position to bear the cost of drawn-out arbitration and litigation proceedings than the states and have, in some cases, made frivolous arguments against states in an effort to exhaust states' resources.

***Appeals of arbitration decisions.*** Mr. Biernoff explained that the MSA vests jurisdiction over enforcement of the MSA, including review of arbitration decisions, in the state court systems. A state supreme court decision may be appealed to the U.S. Supreme Court. Four of the six states to receive an adverse arbitration decision in 2013 regarding NPMs were successful on appeal to state courts and recovered some of the MSA payments they lost through that ruling. The successful appeals came from New Mexico, Maryland, Pennsylvania and Missouri. Two other states that received adverse decisions from the 2003 panel, Kentucky and Indiana, have since joined some other states in a term sheet agreement resolving the NPM adjustment dispute for a limited period of time in exchange for heightened regulation of the NPM market from those states. New Mexico, Missouri, Pennsylvania and Maryland have recovered significant additional revenue on appeals. The U.S. Supreme Court, without stating its reasons, declined to hear appeals by the PMs of the Maryland and Pennsylvania state court decisions in those states' favor. A committee member commented that the companies have a lot more money than the states to fund litigation, and all they need is one win in the U.S. Supreme Court to get a precedential ruling that will favor them in future litigation. The member observed that the makeup of the court has changed since it declined to review the Maryland and Pennsylvania decisions.

***Tobacco-related health costs.*** A member commented that a recent estimate puts New Mexico's annual cost for tobacco-related health issues and treatment at \$850 million, and the annual payment comes nowhere near this amount. A member observed that the litigation leading to the MSA was based on health care impacts resulting from the use of the tobacco companies' products, the companies' denial of causation and the deceptive claims that companies were making in their advertising and commented that other industries such as the cannabis industry can learn from the tobacco companies' experience in this regard.

Mr. Biernoff said he will provide:

(1) five years of data on the Office of the Attorney General's expenses for and time spent on litigation related to the MSA; and

(2) an estimate of how much money is at stake in the 2004 arbitration proceedings.

### **Review and Adoption of 2017 Interim Work Plan and Meeting Schedule**

Ms. Ludi presented a proposed work plan and meeting schedule for the 2017 interim, which may be found in the meeting folder.

In discussion, members noted the importance of the committee's oversight work, even in years of scarce money.

The members agreed:

(1) to change the meeting proposed for Monday, August 21, to Tuesday, September 5;  
and

(2) that one meeting would be in Albuquerque at the UNM Comprehensive Cancer Center and that the other would be at a cancer center in Gallup if possible or alternatively in Santa Fe at the State Capitol.

On a motion duly made, seconded and unanimously adopted, the committee approved the proposed work plan and meeting schedule.

### **Adjournment**

There being no further business before the committee, the first meeting of the TSROC for the 2017 interim adjourned at 3:10 p.m.

Revised: August 4, 2017

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

**August 11, 2017  
State Capitol, Room 311  
Santa Fe**

**Friday, August 11**

- 9:30 a.m.           **Welcome and Introductions**  
—Senator Cisco McSorley, Co-Chair  
—Representative Elizabeth "Liz" Thomson, Co-Chair
- Action Item: Approval of Minutes of June 19 Meeting*
- 9:45 a.m.       (1)   **Department of Health (DOH)**  
—Dominick Zurlo, Program Manager, Hepatitis and Harm Reduction  
Program (HIV, STD and Hepatitis), DOH  
—Benjamin Jacquez, Program Manager, Tobacco Use Prevention and  
Control Program, DOH  
—Beth Pinkerton, Manager, Breast and Cervical Cancer Early Detection  
Program, DOH  
—Christopher Lucero, Health Educator Supervisor, Diabetes Prevention and  
Control Program, DOH
- 10:45 a.m.       (2)   **Human Services Department (HSD)**  
—Megan Pfeffer, R.N., Quality Bureau Chief, Medical Assistance Division,  
Breast and Cervical Cancer Treatment Program, Medicaid Program,  
HSD
- 11:15 a.m.       (3)   **Reducing Tobacco Use in New Mexico**  
—Sandra Adondakis, New Mexico Government Relations Director,  
American Cancer Society Cancer Action Network  
—Poqueen Rivera, New Mexico Government Relations Director, American  
Heart Association
- 12:15 p.m.       **Public Comment**
- 12:30 p.m.       **Adjourn**



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

**August 11, 2017  
State Capitol, Room 311  
Santa Fe**

The second meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on August 11, 2017 at 9:40 a.m. in Room 311 of the State Capitol in Santa Fe.

**Present**

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

**Absent**

Rep. Joanne J. Ferrary  
Sen. John Arthur Smith

**Advisory Members**

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

Sen. Candace Gould  
Sen. Mary Kay Papen

**Guest Legislators**

Sen. Carlos R. Cisneros  
Rep. Miguel P. Garcia  
Sen. Howie C. Morales  
Rep. Dennis J. Roch

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Kathleen Dexter, Researcher, LCS  
Sara Wiedmaier, Intern, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are on the New Mexico Legislature website and in the meeting file.

**Friday, August 11**

**Department of Health (DOH): Hepatitis and Harm Reduction Program**

Dominick Zurlo, manager, Hepatitis and Harm Reduction Program, DOH, gave an update on the DOH program to reduce the spread of hepatitis, sexually transmitted diseases and human immunodeficiency virus (HIV) in the state. The program is funded in part with money received through the Master Settlement Agreement with tobacco companies.

The Hepatitis and Harm Reduction Program delivers services through public health offices and contractual providers statewide. In fiscal year (FY) 2017, the program conducted more than 4,600 hepatitis tests and, in FY 2016, distributed more than 4,100 hepatitis vaccines. The program focuses on the under-30 population, the age group with the highest infection rate.

The program also includes distribution of syringes and naloxone, an opioid overdose reversal drug. Approximately 6.75 million new syringes were distributed in FY 2016, and approximately 95 percent of the distributed syringes were subsequently collected. Two-thirds of those who receive syringe services attempt to get treatment for substance abuse, though many are unsuccessful due to a lack of services in their area. Naloxone was distributed to more than 3,000 people enrolled in the program in calendar year 2016, a nearly threefold increase over the amount distributed five years earlier. Also in that five-year period, the number of successful overdose reversals increased six times over.

The program is funded entirely by the state. Some of the money comes from tobacco settlement funds — \$293,000 in FY 2017 and the same amount in FY 2018. The DOH will request an additional \$150,000 in tobacco settlement funds for FY 2019, for a total of \$443,000.

On questioning, Mr. Zurlo and committee members addressed the following topics.

***Treatment barriers.*** Substance abuse treatment is not available in many rural areas; a person must travel and, in some cases, arrange for overnight lodging in order to receive treatment. Lack of support from family and friends, who might be users, is also a barrier.

***Outreach.*** Public health offices conduct mobile outreach, as do community partners such as the Santa Fe Mountain Center, Alianza of New Mexico and Families and Youth, Incorporated.

***Naloxone.*** The program is working with the Corrections Department to provide naloxone, as well as information on a range of available services, to inmates as they are released from detention. The Metropolitan Detention Center in Albuquerque houses a public health office that also provides services, including testing and education.

Follow-up on those who overdose and are treated with naloxone is difficult because the drug is not necessarily distributed to the people who overdose but to those around them who administer it. Information on treatment services is provided when naloxone is distributed. If a

person returns for an additional naloxone distribution, program personnel try to get information on incidents in which naloxone was used.

**Tattoos.** Hepatitis can be contracted in the tattooing process if the equipment is not sterile, which can be the case in unlicensed or correctional facilities. The under-30 population is especially vulnerable to infection from tattooing, as well as from substance abuse.

**University of New Mexico (UNM) collaboration.** The program collaborates with UNM's Project ECHO (Extension for Community Healthcare Outcomes) for the AIDS Education and Training Center and with the UNM Biostatistics Department for hepatitis research.

**Syringe services.** In 2015, the federal government decided that states can use federal money for syringe services; however, no federal money has been released for this purpose. The syringes that are handed out through the program do not have identifiers because of cost.

**Comparison with other states.** New Mexico is ranked eighth in the nation for prescription drug overdose mortalities; three years ago, the state was ranked third. New Mexico's hepatitis infection rate is comparable with other states in all age groups.

**Hepatitis services.** People who receive hepatitis testing and vaccines through public health offices may not have health insurance or be enrolled in Medicaid, though the DOH does receive a Medicaid match for the services.

Mr. Zurlo will provide:

- (1) data, if available, on how many HIV or hepatitis infections are prevented for every syringe that is returned to the program;
- (2) a list of barriers to substance abuse treatment and how the DOH plans to eliminate those barriers; and
- (3) whether naloxone can be detected in an autopsy (the Office of the State Medical Investigator is not currently testing for it).

#### **DOH: Tobacco Use Prevention and Control (TUPAC) Program**

Benjamin Jacquez, manager, TUPAC Program, DOH, reported to the committee on DOH efforts to reduce tobacco use, especially among minors.

Seventy-eight thousand people in New Mexico suffer from smoking-related diseases, and there are more than 2,600 smoking-related deaths in the state each year. In New Mexico, the combined federal and state tax burden of smoking is more than \$1.4 billion annually, or about \$945 per household. With smokers comprising 27 percent of adult Medicaid enrollees, the annual cost to the Medicaid program is \$222.8 million.

Certain interventions have proven to be effective in reducing tobacco use, including 100 percent smoke-free policies, tobacco cessation services, media campaigns and tobacco product

price increases. Residents statewide have enrolled in QUIT NOW, an initiative that triples the success rate for those who quit smoking over those who try to quit on their own. Because smoking rates are higher in low-income populations than in other groups, the QUIT NOW initiative is especially focused on low-income smokers, many of whom are Medicaid recipients. Some states offer expanded smoking cessation services through their Medicaid programs, as well as reimbursement for "quitline" services, expanded outreach and copayment waivers; to date, New Mexico has not implemented any of these measures.

The TUPAC Program also works to reduce secondhand smoke exposure by creating smoke-free environments in multiple-family housing and in tribal and university facilities. Beginning with the 2017 fall semester, all UNM facilities statewide will be tobacco-free.

The program's annual budget — a blend of state and federal money — is \$6.6 million. This is less than one-third of the funding amount recommended by the federal Centers for Disease Control and Prevention (CDC).

On questioning, Mr. Jacquez and committee members addressed the following topics.

***Price increases.*** The CDC strongly recommends that states increase the price of tobacco products because numerous studies show a correlation between price increases and a drop in tobacco use.

***Medicaid.*** A member proposed that nonsmoking be added as a condition of enrollment in the state's Medicaid program.

***Public schools.*** The TUPAC Program works with the Public Education Department to raise awareness among middle school and high school students of the dangers of using tobacco, including flavored tobacco products.

***E-cigarettes.*** The governor vetoed legislation from the 2017 regular session that would have added e-cigarettes to the scope of the Dee Johnson Clean Indoor Air Act. A member suggested that the topic be reintroduced in the 2018 session pursuant to the provision of Article 4, Section 5 of the Constitution of New Mexico, allowing introduction of bills of the last previous regular session vetoed by the governor.

***Smoking rates.*** New Mexico's average smoking rates for adults (16.6 percent) and youth (11.4 percent) are comparable to those in other states.

***Funding concerns.*** A member suggested that representatives from all DOH programs in attendance draft contingency plans for how to fund their programs if tobacco settlement funds dry up.

Mr. Jacquez will provide:

- (1) data and a chart on the relationship between cigarette tax increases and smoking decreases, especially in youth, and the effects of both on state revenue;
- (2) data on the decrease or increase in smokeless tobacco use from 2003 to 2015;
- (3) a chart similar to the one on page 22 of the handout that shows, as a percentage of the population rather than as a head count, which counties are doing well with their smoking cessation programs;
- (4) the percentage of people in the high-risk pool who are there because of conditions related to tobacco use;
- (5) information on California's "limp-cigarette" advertisement and whether New Mexico can use it or use a poster generated from it;
- (6) California surveys, if any, on the effectiveness of its anti-smoking advertisements; and
- (7) CDC surveys, if any, on the effectiveness of anti-smoking ads.

### **Approval of Minutes**

On a motion duly made, seconded and unanimously adopted, the minutes from the committee's June 19, 2017 meeting were approved.

### **DOH: Breast and Cervical Cancer Early Detection (BCC) Program**

Beth Pinkerton, manager, BCC Program, DOH, reported on New Mexico's BCC Program, which provides breast and cervical cancer screening and diagnostic services at no cost to eligible women in the state. Approximately 72,000 women currently meet the eligibility requirements, which include age, income and insurance coverage factors.

Nearly 1,400 women in New Mexico are diagnosed with invasive breast cancer every year, and nearly 250 of them die. The BCC Program addresses the issue through a statewide network of providers that offer mammogram services, prioritized for women ages 40 to 49 years old. Providers agree to accept Medicare reimbursement rates for their services and are paid with tobacco settlement funds, which have been flat at \$128,600 per year since FY 2012. The funds are also used as a match for additional federal funding for the program. While the BCC Program does not pay for breast or cervical cancer treatment, program participants may receive treatment through Medicaid if they meet income eligibility requirements.

Because smoking and exposure to secondhand smoke increase the risk of breast cancer, all BCC Program participants are screened for tobacco use and, if appropriate, are referred to DOH tobacco cessation services.

On questioning, Ms. Pinkerton noted that:

- (1) while not a perfect screening tool, mammograms are the best tool available for breast cancer screening and are required for federal program funding; and
- (2) the BCC Program has not changed since the state expanded Medicaid.

## **DOH: Diabetes Prevention and Control (DPC) Program**

Christopher Lucero, health educator supervisor, DPC Program, DOH, reported on diabetes in the state and the DOH program to reduce its incidence, complications and costs.

More than one-fourth of the state's population — 635,000 adults — are "pre-diabetic", and the CDC estimates that up to 30 percent of them will develop type 2 diabetes in the next five years. One risk factor is smoking; smokers face a 30 percent to 40 percent higher risk of developing diabetes than nonsmokers. Direct and indirect costs to the state of diabetes and pre-diabetes far exceed its investment in addressing the issue; in FY 2017, for example, the DPC Program spent \$1.2 million on diabetes prevention and control, while the overall cost to the state for treatment the same year came to \$2.5 billion.

The program, which receives tobacco settlement funding, incorporates interventions that have been proven to be effective, such as weight loss and lifestyle-change services; chronic disease self-management services; and support. Future initiatives include development of a statewide diabetes prevention plan, expansion of the program into more communities around the state and development of population-specific promotional messaging.

On questioning, Susan Baum, M.D., medical director, Chronic Disease Bureau, DOH, who spoke from the audience, noted that stem cell research into diabetes is being conducted by the National Institutes of Health and at certain universities around the country, though not at UNM.

## **Human Services Department (HSD) Update**

Megan Pfeffer, R.N., chief, Quality Bureau, Medical Assistance Division, HSD, gave a presentation on tobacco use prevention and cessation services in the state's Medicaid program, also known as Centennial Care.

The Medicaid program received a \$27.3 million appropriation from the Tobacco Settlement Program Fund for FY 2017 and a \$29.3 million appropriation for FY 2018. Some of the funding was allocated to tobacco use prevention and cessation services, which include direct treatments such as patches, drugs and inhalers, as well as support services such as counseling and a quitline. In addition to individual treatments and support, Centennial Care's managed care organizations (MCOs) host a variety of smoking cessation initiatives, including the Quit for Life Program and outreach and information on the American Cancer Society's Great American Smokeout. MCOs are required by contract to monitor member use of smoking cessation products and counseling and to provide education on the risks of tobacco use. In 2016, the MCOs reported that more than 7,600 Medicaid enrollees received tobacco use prevention and cessation services.

A portion of the appropriations from the Tobacco Settlement Program Fund was also designated for breast and cervical cancer treatment for eligible women. This program has undergone some changes since the state's Medicaid expansion took effect. Currently, 176

women are receiving treatment under Medicaid Category 052, down from 231 at this time last year; the decrease is most likely due to more women qualifying for services under Medicaid Category 100 now that Medicaid eligibility has been expanded.

On questioning, Ms. Pfeffer and committee members addressed the following topics.

**Assessments.** Comprehensive needs assessments are required for a Medicaid enrollee to receive level 2 or level 3 care coordination services. Prenatal assessments are conducted upon referral for pregnancy services.

**Children.** Care coordinators discuss with caregivers the dangers to children of smoking and secondhand smoke.

Ruby Ann Esquibel, principal fiscal analyst, Legislative Finance Committee (LFC), who spoke from the audience, announced that the LFC will hold hearings on the Medicaid program on Wednesday, August 16, 2017. She also explained that tobacco use prevention and cessation programs are not included in the HSD agency report card because these reports do not go into program-level detail.

Ms. Pfeffer will provide information on:

- (1) why the 1-800-QUIT-NOW line does not get Medicaid reimbursement and whether it qualifies for it;
- (2) MCO contracts with providers for tobacco-related services; and
- (3) coordination between the Medicaid program and the DOH's TUPAC Program.

### **Reducing Tobacco Use in New Mexico**

Sandra Adondakis, New Mexico government relations director, American Cancer Society Cancer Action Network, and Poqueen Rivera, New Mexico government relations director, American Heart Association, presented strategies for reducing tobacco use in the state.

The presenters identified the three most effective, evidence-based strategies to reduce tobacco use as follows:

- *Increases in tobacco taxes.* Price increases lead to a reduction in smoking, most notably in youth, and provide the state with needed revenue. The LFC estimates \$88 million to \$94 million in new recurring revenue from a \$1.50 increase per pack. New Mexico's tobacco taxes are below average among states, and the state does not impose a tax on e-cigarettes. Based on a comprehensive review of evidence, the U.S. surgeon general has called raising prices on cigarettes "one of the most effective tobacco control interventions". The tobacco industry itself recognizes the effect of increased prices on reducing smoking, especially among children: according to the R.J. Reynolds Tobacco Company, if prices were 10 percent higher, the incidence of smoking among youth ages 12 to 17 would be 11.9 percent lower.

- *Fully funded prevention and cessation programs.* Funding to reduce tobacco use in New Mexico is less than 25 percent of the level recommended by the CDC. States with sustained, well-funded prevention programs have reduced youth smoking by 45 percent to 60 percent. Conversely, when program funding is cut, smoking rates stop declining or rise.
- *Comprehensive smoke-free policies.* The tobacco industry has acknowledged that smoking prohibitions in the workplace lead to smoking rates 11 percent to 15 percent below average and a quit rate that is 84 percent higher than average. New Mexico's smoke-free laws are comparable to other states but need improvement, especially in regard to e-cigarettes.

When tobacco is sold to a minor, New Mexico law currently penalizes the clerk who makes the sale, but not the retailer. The presenters urged the committee to amend the statute to hold retailers accountable and to create a dedicated funding stream for enforcement efforts. They also explained the risk of losing federal funding if New Mexico's noncompliance rate on sales to minors is found to be 20 percent or higher. In 2016, eight counties in the state had a violation rate that exceeded this limit. One challenge in enforcing the law is the lack of a comprehensive list of retailers in the state that sell tobacco.

On questioning, the presenters, committee members and Dr. Baum addressed the following topics.

***Tobacco products tax.*** A member suggested that exempting certain tobacco products from the tax would help a bill to increase tobacco taxes progress through the legislative process. The presenters noted that some products that are currently not taxed, such as flavored cigars, are very popular with youth and that to include them in the tax would help prevent youth tobacco use.

Another gap in the tax is tribal tobacco sales, which are not subject to state taxes. Tribes have agreed to impose an "equivalent tax".

***Erectile dysfunction.*** Smoking is one of the leading causes of erectile dysfunction. Though California's limp-cigarette advertisement implies that the negative effect is immediate, effects develop over time and mostly in long-term smokers. Data have not been gathered on how much tobacco-related erectile dysfunction costs the state in treatments and prescriptions. Drugs that are prescribed for erectile dysfunction are also used to treat other health issues.

***Hookahs.*** Hookah use has been declining since e-cigarettes have been available. There currently is no way to track tobacco purchases for use in hookahs; thus, it is not known whether gross receipts tax is charged on the products.

***Tobacco sales to minors.*** The federally funded Synar Program recruits minors to assist law enforcement by attempting to make tobacco purchases in order to check retailer compliance with the law.

Ms. Adondakis will provide information on lawsuits against the federal Food and Drug Administration over e-cigarette regulations.

Committee staff will look into whether creating a list of tobacco retailers in the state can be required through regulation rather than by law.

**Adjournment**

There being no further business before the committee, the second meeting of the TSROC for the 2017 interim adjourned at 1:30 p.m.



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

**September 5, 2017  
University of New Mexico Comprehensive Cancer Center  
Albuquerque**

**Tuesday, September 5**

- 9:30 a.m.           **Welcome and Introductions**  
—Senator Cisco McSorley, Co-Chair  
—Representative Elizabeth "Liz" Thomson, Co-Chair
- Action Item: Approval of Minutes of August 11 Meeting*
- 9:45 a.m.       (1)   **Welcome; University of New Mexico (UNM) Health Sciences Center (HSC) Tobacco Settlement Revenue Program Overview; Research, Genomics, Biocomputing and Environmental Health**  
—Richard S. Larson, M.D., Ph.D., Executive Vice Chancellor and Vice Chancellor for Research, UNM HSC
- 10:30 a.m.       (2)   **Specialty Education in Trauma; Specialty Education in Pediatrics; Instruction and General Purposes**  
—Richard S. Larson, M.D., Ph.D., Executive Vice Chancellor and Vice Chancellor for Research, UNM HSC
- 10:45 a.m.       (3)   **Pediatric Oncology Program**  
—John Kuttesch, M.D., Ph.D., Division Chief, Pediatric Hematology/Oncology, UNM HSC
- 11:30 a.m.       **Working Lunch** (lunch provided for committee members)  
(4)   **UNM Comprehensive Cancer Center Update**  
—Cheryl Willman, M.D., Director and Chief Executive Officer, UNM Comprehensive Cancer Center
- 1:30 p.m.       (5)   **New Mexico Poison and Drug Information Center; E-Cigarette Research**  
—Susan Smolinske, Pharm.D., Diplomate of the American Board of Applied Toxicology, Director, New Mexico Poison and Drug Information Center

2:00 p.m. (6) [Indian Affairs Department \(IAD\) Tobacco Cessation and Prevention Programs](#)  
—Suzette Shije, Acting Secretary, IAD  
—Allie Moore, Keres Consulting, Inc.

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

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

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

**September 5, 2017  
University of New Mexico Comprehensive Cancer Center  
Albuquerque**

The third meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on September 5, 2017 at 9:45 a.m. at the University of New Mexico (UNM) Comprehensive Cancer Center (CCC) in Albuquerque.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. Elizabeth "Liz" Thomson, Co-Chair  
Rep. Joanne J. Ferrary  
Sen. John Arthur Smith

**Absent**

Sen. Sander Rue  
Rep. Monica Youngblood

**Advisory Members**

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

Sen. Candace Gould  
Sen. Mary Kay Papen

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Kathleen Dexter, Researcher, LCS  
Maria Alaena Romero, Intern, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

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

**Monday, September 5**

**Welcome; UNM Health Sciences Center (HSC) Tobacco Settlement Revenue Program Overview and Specialty Education Programs**

Richard S. Larson, M.D., Ph.D., executive vice chancellor and vice chancellor for research, UNM HSC, welcomed the committee and provided an overview of programs at the HSC that are funded with tobacco settlement revenue, including specialty education programs.

Dr. Larson opened his presentation with the HSC's fiscal year (FY) 2019 funding request. He noted that the center first received funding from tobacco settlement revenue in 2000 and 2001. The amount has varied since then, reaching a high in 2009 and declining since then. After adjusting for inflation, the HSC would need an 80 percent increase in tobacco settlement funding over its appropriation in FY 2018 to match the funding it received in 2009. The center received \$2.86 million in FY 2018 from tobacco settlement revenue, a reduction of \$103,000 from its FY 2016 appropriation. Dr. Larson requested that the center's funding for FY 2019 be restored to its FY 2016 level. The HSC uses tobacco settlement revenue funding to leverage federal grants, receiving between \$8.00 and \$21.00 in federal dollars for every \$1.00 of the tobacco settlement revenue.

Referring to his handout, Dr. Larson explained that as an academic health center, the HSC's charge is to deliver health care, provide education and conduct research. Supported by tobacco settlement revenue, the center hosts 579 activities, such as providing patient care, education and research in 246 communities across all counties in the state. Additional core projects supported by the revenue include the following.

- ◆ *New Mexico Poison and Drug Information Center (NMPDIC)*. The center's hotline receives 30,000 calls per year and is the only poison center in the state.
- ◆ *Pediatric Oncology Program*. This program is the only source of tertiary care, specialized consultative health care and advanced medical investigation and treatment for children with cancer in the state. The program includes numerous clinical trials, which provide treatment for 96 percent of young cancer patients in New Mexico.
- ◆ *Biomedical research in genomics, biocomputing and environmental health*. Many research efforts at the center that began with pilot funding through tobacco settlement funds have led to additional federal and extramural grant funding, as well as commercialization of technology developed through the research.

Tobacco settlement revenue is also used for instruction and general purposes, including specialty trauma and pediatric care education. The funds support additional faculty positions in these fields and supplement faculty compensation rates, which are below the national average. Faculty recruitment and retention are ongoing issues.

Dr. Larson noted the threat to tobacco settlement funding posed by legal challenges from tobacco manufacturers. If the funding were to be significantly diminished or completely disappear, New Mexico would lose critical patient services, jobs and economic activity.

On questioning, Dr. Larson and committee members addressed the following topics.

***Higher education system.*** Members expressed concern that the general public does not fully understand the positive impact that the state's higher education system in general, and UNM in particular, has statewide. UNM experienced steeper funding cuts than other state schools. If funding for higher education had not been restored in the special session, many services would

have been lost, such as the state's crime laboratory and health care research, education and treatment. The full effect of the higher education budget standoff on faculty and student recruitment remains to be seen. Reconfiguring the higher education system to establish a buffer between it and the executive branch could protect higher education from funding cuts due to philosophical differences with the governor.

One way to educate the public on the value and impact of the higher education system would be to erect signs at rural clinics stating, "Your tax dollars at work — UNM Health Sciences Center working in your community".

Tobacco settlement revenue is not a reliable funding source for instruction and general purposes and should be considered temporary.

***Public sector versus private sector.*** The public and private sectors serve complementary purposes. Public sector facilities, such as the HSC, provide foundational research; private sector entities develop that research into technology and take it to market, ideally sharing the return on investment with the public sector.

***Bioscience.*** New Mexico is in a good position to build its bioscience industry, but it loses out to other locations that can more quickly demonstrate readiness to receive, develop and support new businesses. The New Mexico Bioscience Authority is developing a community-readiness rating system.

On the federal level, severe funding cuts are proposed for the National Institutes of Health, which provide grant funding for bioscience research. Cuts to funding for research of all kinds are also proposed.

***Tobacco Settlement Permanent Fund.*** The fund has been eroding for years because as a reserve fund, it has been used to shore up the General Fund. The Master Settlement Agreement payment for FY 2019 is projected to be \$36 million, a decrease of \$3 million from the previous payment. The State Investment Council (SIC), which manages the permanent fund, is keeping the balance of approximately \$110 million liquid in case it is needed for the General Fund.

***HSC funding.*** A portion of cigarette tax revenue goes to the HSC. The center has received \$90 million since 2011 in federal funding for research through the federal Patient Protection and Affordable Care Act (ACA).

***Health care education internships and residencies.*** Some rural communities are advocating that one-half of the internships and residencies in the HSC education programs be served outside of Albuquerque in smaller, more rural communities with less access to health care. The challenge of placing that many residents in rural areas is that there are not enough health care facilities and not enough population in rural areas that meet the resident accreditation

requirements. The HSC is working on ways to support placing residents in rural health care facilities. Another issue is housing residents in rural areas.

- ★ Dr. Larson will prepare a memo outlining the challenges posed by moving one-half of the HSC internships to rural areas of the state.
- ★ Ruby Ann Esquibel, principal fiscal analyst, Legislative Finance Committee, will provide information on what sort of tax would be necessary to support the HSC's One-Plus-Two residency programs statewide.

### **Pediatric Oncology Program**

John Kuttesch, M.D., Ph.D., division chief, Pediatric Hematology/Oncology, UNM HSC, gave an overview of the mission and work in the center's pediatric oncology program, which serves patients from all around the state.

The program's mission is to provide clinical service, research and education to decrease the burden of childhood cancer to children and families in New Mexico. The program served more than 400 active patients through approximately 5,000 clinic and inpatient visits in the last fiscal year alone. Its clinical services include pediatric hematology/oncology services, a survivorship clinic, pediatric neuro-oncology services and the Mariposa Program for pediatric hospice services. The pediatric oncology program also conducts research; mentors and educates medical residents and students; and has developed specialty programs in brain tumors, adolescent and young adult oncology and vascular-lymphatic malformations.

Ten percent — \$250,000 — of the pediatric oncology program's FY 2018 budget came from tobacco settlement funds, which are being used to cover the cost of clinical trials.

On questioning, Dr. Kuttesch, Dr. Larson and committee members addressed the following topics.

***Pediatric cancer incidence.*** Rates of pediatric cancer in New Mexico are approximately the same as national rates. There is no clear relationship to environmental factors, and some data are not available, such as pediatric cancer rates in the vicinity of uranium mining operations.

***"Right to Try" legislation.*** The HSC evaluated the "Right to Try" bill from the 2017 session, which would have allowed participation in prescription drug trials at an early stage of development. The center took the position that the legislation did not adequately protect participants.

***Insurance coverage.*** New Mexico is one of 18 states that require insurance coverage for participation in clinical trials.

**Cancer survival rate.** The cancer survival rate has improved significantly since the 1970s and is now 85 percent, due in part to clinical trial development and strong enrollment in those trials.

### **Minutes**

On a motion duly made, seconded and unanimously adopted, the minutes from the August 11, 2017 meeting were approved without amendment.

### **UNM CCC Update**

Cheryl Willman, M.D., director and chief executive officer, UNM CCC, gave an update on work at the CCC, which was designated in 2015 as a National Cancer Institute comprehensive cancer center.

The CCC's goals go beyond providing cancer treatment to include conducting research; providing education and training, with an emphasis on minority students; and economic development through expansion of health care. The CCC provided care to more than 12,500 patients in FY 2017 at its UNM facility and its facilities in Las Cruces, and it projects an increase to more than 14,000 patients in FY 2018. Included in the FY 2017 numbers are more than 1,100 patients who traveled from out of state.

The CCC's 2020 strategic plan includes an expansion to its clinic facilities, new cancer clinical service lines and a research strategy under which the CCC will:

- ◆ develop a New Mexico cancer patient cohort centered on cancers with significant health disparities in the state;
- ◆ develop a formal research collaborative with pueblos and the Department of Health for a Native American cancer genome project;
- ◆ determine the impact of environmental exposures on cancer causation, including genome mutations; and
- ◆ conduct genome sequencing across multiple ethnic groups on cancers with health disparities in the state, with the aim of developing targeted cancer therapies.

Research efforts at the CCC focus on cancers that affect New Mexicans at a higher rate than the national average, such as liver cancer. The CCC will continue its work to map cancer incidence in the state through registries that track tumors, human papillomavirus and colorectal cancer, as well as its work with Project ECHO. It will also continue its immunotherapy research and development under the direction of Olivier Rixe, M.D., Ph.D., an internationally renowned cancer researcher who was recruited from France with state matching funds designated for endowed chairs.

On questioning, Dr. Willman and committee members addressed the following topics.

***Cancer incidence and outcomes.*** Cancer rates vary by the type of cancer and by ethnicity. Some rates are increasing for minorities and some are decreasing. The rates reported in Dr. Willman's handout differentiate between ethnicities but not between rural and urban populations. In some cases, the incidence of a cancer may go down while the outcomes go down as well. New Mexico has a high rate of pancreatic cancer, especially in women, and outcomes are very poor.

***Clinical trials.*** The five-year survival rate for trial participants has increased to 70 percent due to better drugs, better trials and better care for participants. The CCC has several clinical trial sites outside of Albuquerque and plans to open an additional site in Clovis.

***Out-of-state cancer patients.*** Patients who come from out of state — "oncotourists" — pay the full price for their treatment. Some states are trying to negotiate interstate treatment reciprocity agreements to cover these patients.

***Cowboys for Cancer Research.*** Funds raised by a Cowboys for Cancer Research event no longer go entirely to the CCC now that it has built up a \$1 million endowment; funds are now also going to New Mexico State University (NMSU) to build an endowment there. When NMSU has the same size endowment, the two universities will split the funds raised equally.

***Cancer screening.*** Screening programs, which are required under the ACA, have been shown to provide significant savings in health care costs.

***Budget.*** The CCC's budget request for FY 2019 is the same as it was for FY 2018.

***SIC funding.*** Start-up ventures in the state's biomedical sector can get seed money from the SIC; however, they often leave the state to pursue further funding. Adding a requirement that these businesses remain in the state for a certain length of time after receiving SIC money would help create and maintain jobs in New Mexico.

***Insurance coverage and uncompensated care.*** Some insurance plans prevent patients from receiving treatments at the CCC; however, if the CCC provides treatment that is not available elsewhere, insurance companies sometimes pay for it. The CCC does not refuse to treat patients who are underinsured, and it provides \$12 million per year in uncompensated care. Dr. Willman noted that Medicare has the "best" cancer insurance coverage while the "worst" coverage is currently found on the insurance exchanges.

#### **NMPDIC; E-Cigarette Research**

Susan Smolinske, Pharm.D., director, NMPDIC, reported on the dramatic increase in calls received by poison information centers nationwide concerning exposure to the components of e-cigarettes.

From 2010 to 2014, the NMPDIC saw a seven-fold increase in calls related to e-cigarette exposure, an increase that slowed slightly after new requirements for child-resistant packaging were signed into law in 2015. Most calls concern exposure to the liquid nicotine used in e-cigarette devices and have included poisoning from skin exposure from spills, ingesting the liquid and eye exposure from mistaking the liquid nicotine containers for eyedrop containers. Some calls have concerned malfunctions in e-cigarette mechanisms, including spontaneous battery explosions.

In 2015, U.S. poison centers received nearly 3,600 reports of e-cigarette and liquid nicotine exposure, more than one-half of them concerning children under six years of age. While liquid nicotine is extremely toxic, particularly to children, closed-system e-cigarettes and the liquid nicotine used in them can be child-proofed; open systems cannot be child-proofed, and open systems are becoming increasingly popular, especially with teenagers.

On questioning, Ms. Smolinske and committee members addressed the following topics.

**Labeling.** There are currently no laws in the country governing how liquid nicotine is labeled and no consistent notation across brands showing how much nicotine they contain. The federal Food and Drug Administration (FDA) has the authority to regulate e-cigarette liquids that are sold; however, any custom liquids mixed by users are beyond the FDA's purview.

**Contents.** Sweet-flavored e-cigarette liquids tend to have ingredients that are toxic to the lungs. Liquids that produce a lot of smoke contain formaldehyde.

**Dee Johnson Clean Indoor Air Act.** E-cigarettes are not included in the Dee Johnson Clean Indoor Air Act. A 2017 bill that would have added them to the act was vetoed by the governor.

**Funding.** Twenty-five percent of the NMPDIC's budget — \$590,000 — comes from tobacco settlement revenue; the balance comes from the General Fund and from federal funding.

**Referrals to child protective services.** The NMPDIC will make a referral to child protective services only if a call regarding a minor "screams of abuse".

### **Indian Affairs Department (IAD) Tobacco Cessation and Prevention Program**

Suzette Shije, acting secretary, IAD, and Allie Moore, Keres Consulting, Inc., gave a presentation on programs to educate Native American youth about the dangers of tobacco use. The programs are funded with annual appropriations from tobacco settlement revenue.

According to the New Mexico Youth Risk and Resiliency Survey, the smoking rate for Native American high school students in New Mexico continues to be higher (17 percent) than the rate for New Mexico high school students overall (11 percent), despite a marked decrease in

smoking in all populations since 2003. Electronic vapor products are the tobacco product most commonly used by Native American high school students, followed by cigarettes and hookahs.

The IAD first received tobacco settlement revenue funding in 2008 and established a tobacco cessation and prevention grant program for tribes that apply for funding. Twenty tribes have received tobacco grants since then. In FY 2017, the IAD distributed its \$249,300 tobacco settlement appropriation to 11 community-based tobacco cessation and prevention programs hosted by tribes and pueblos around the state. Of those programs, seven received FY 2018 funding, along with two new programs. Combined, the programs engaged more than 9,500 youth and adults, with reductions in smoking in both groups, improved health outcomes and strengthened cultural identities.

Eric Chang, who works with the cessation and prevention program at the Pueblo of Pojoaque Wellness Center, joined the presenters to describe that program's sports-based approach to educating youth about the dangers of tobacco.

On questioning, the presenters and committee members addressed the following topics.

**Staffing.** One full-time IAD employee handles the cessation and prevention program grant applications. The tribes and pueblos that host the programs employ 18 part-time staff. Some programs include elders as volunteers.

**Discontinued programs.** The programs that received funding in FY 2017 but not in FY 2018 either closed or received federal funding and did not pursue tobacco settlement funding.

**Funding allocations.** The IAD sets aside \$50,000 of tobacco settlement revenue for emerging cessation and prevention programs and uses the rest for established programs. Any funding that is not used within a fiscal year reverts to the Tobacco Settlement Program Fund.

### **Public Comment**

Skip Wardlow, Healthy Family Services, Pueblo of Nambe, described that pueblo's use of talking circles to educate youth about the differences between historical ceremonial use of tobacco, which was low in nicotine, and the dangers posed by use of current tobacco products.

### **Adjournment**

There being no further business before the committee, the third meeting of the TSROC for the 2017 interim adjourned at 4:15 p.m.





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

**November 30, 2017  
State Capitol, Room 311  
Santa Fe**

The fourth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Senator Cisco McSorley, co-chair, on November 30, 2017 at 10:10 a.m. in Room 311 of the State Capitol in Santa Fe.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. Joanne J. Ferrary  
Sen. Sander Rue  
Rep. Monica Youngblood

**Absent**

Rep. Elizabeth "Liz" Thomson, Co-Chair  
Sen. John Arthur Smith

**Advisory Members**

Sen. Linda M. Lopez

Rep. Gail Chasey  
Sen. Candace Gould  
Sen. Mary Kay Papen  
Rep. Jim R. Trujillo

**Guest Legislators**

Rep. Alonzo Baldonado  
Sen. Nancy Rodriguez

**Minutes Approval**

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Kathleen Dexter, Researcher, LCS  
Sara Wiedmaier, Intern, LCS  
Maria Alaena Romero, Intern, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

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

**Thursday, November 30**

**Tobacco Settlement Funds Update**

Ruby Ann Esquibel, principal analyst, Legislative Finance Committee (LFC), and Dawn Iglesias, economist, LFC, gave a three-year review of the Tobacco Settlement Permanent Fund (permanent fund) and presented the LFC's fiscal year (FY) 2019 recommendations for appropriations from the Tobacco Settlement Program Fund (program fund).

The permanent fund balance at the close of FY 2018 is projected to be \$156 million, a gain of nearly \$46 million since FY 2016, when more than \$109 million was transferred from the fund to shore up the General Fund, but it is still \$60 million shy of its balance prior to the transfer. No such transfers were made from the permanent fund in FY 2017, and no transfers are projected for FY 2018 or FY 2019. As of October 31 of this year, the fund's balance had already risen to nearly \$152 million.

Appropriations from the program fund for FY 2016 through FY 2018 were \$40.1 million, \$37 million and \$39 million, respectively. The LFC recommends that FY 2019 appropriations total \$36 million, based on the attorney general's estimate for settlement revenue due to the state in the coming year. To make up for the \$3 million decrease in funding over FY 2018, the LFC appropriation recommendations remain flat for all programs except the Human Services Department contingent Medicaid appropriation, which is reduced by \$3 million.

On questioning, the presenters and committee members addressed the following topics.

***Fund management.*** The State Investment Council (SIC) manages investment of the permanent fund, which had higher returns in FY 2017 than were expected and is projected to see 5.5 percent returns in FY 2018.

***LFC funding recommendations.*** The LFC bases its funding recommendations on a review of annual agency budget requests, as well as on its own program evaluations. The LFC staff submits its recommendations to the LFC for a vote; the final LFC recommendations go to the legislature for a vote. Members and presenters discussed the value of and processes for prioritizing cessation and prevention programs for program fund spending. The committee may suggest that if extra money becomes available, it should be appropriated for tobacco cessation and prevention programs.

***Medicaid.*** A member expressed concerns that the federal budget currently under debate might cut Medicaid by \$300 billion and noted that when a similar cut was made in the past, the reduction was taken from Medicaid spending for cancer treatment.

**Minutes**

On a motion duly made, seconded and unanimously adopted, the minutes from the committee's September 5, 2017 meeting were approved.

## **Funding Requests for FY 2019**

Referring to the funding requests table handout, Ms. Ludi presented a list of agency requests for funding from the program fund, noting that the requests from the Department of Health (DOH) for the Tobacco Use Prevention and Control Program and the Hepatitis and Harm Reduction Program and from the University of New Mexico (UNM) Health Sciences Center are higher than the amounts recommended by the LFC in its presentation. The funding requests table handout summarizes the information provided by the applicants on the Tobacco Settlement Funding Revenue Request forms. The table and forms are posted on the legislature's website, linked to item 2 of the agenda.

Speaking from the audience in support of the requests presented on the list were Cathy Roche, deputy director of programs, Public Health Division, DOH; Benjamin Jacquez, manager, Tobacco Use Prevention and Cessation Program, Public Health Division, DOH; Paul Sanchez-Hindi, executive director, New Mexico Cancer Center Foundation; Allie Moore, project manager, Keres Consulting, Inc.; Mathew Munoz, government relations manager, UNM; Judy Towers, ambassador, American Cancer Society Cancer Action Network; and Janna Vallo, commercial tobacco control and prevention coordinator, Albuquerque Area Southwest Tribal Epidemiology Center. In discussion, the advocates pointed out that:

- reversions from FY 2017 funding totaled \$1.5 million for the Public Health Division of the DOH and \$20,039 for the Indian Affairs Department;
- the UNM Health Sciences Center's original request, which was reduced in the LFC recommendations, would restore the center's funding level to its FY 2016 amount; and
- while the annual cost to New Mexico of tobacco-related illnesses is \$1.4 billion, the state spends on average \$39 million on prevention, cessation and research programs.

On a motion duly made, seconded and unanimously adopted, the funding requests as presented by Ms. Ludi were approved.

## **Legislation Endorsement**

### ***Bill to Increase the Cigarette Tax (.208818.2)***

Senator Howie C. Morales and Sandra Adondakis, New Mexico government relations director, American Cancer Society Cancer Action Network, requested endorsement from the committee for a bill that would increase the cigarette tax and tobacco products tax; include e-cigarettes in the scope of the Tobacco Products Tax Act; and distribute revenue from the tax increases to the Public School Fund for the state equalization guarantee distribution. In discussion, the presenters and committee members noted that:

- while the bill creates a revenue source, its intent is to decrease tobacco use;
- cigar shops might go out of business if the tax is increased;
- a broader revision of the state's tax code is needed; and

- increasing tobacco taxes is a popular measure with the public.

On a motion duly made, seconded and unanimously adopted, the committee endorsed the bill.

***Bill to Prohibit Tobacco Sales to Persons Under 21 (.208819.1)***

Senator McSorley requested endorsement from the committee for a bill that would ban the sale of tobacco products, e-cigarettes and nicotine liquid containers to persons under 21 years of age.

On a motion duly made, seconded and unanimously adopted, the committee endorsed the bill.

**House Memorial 64 Prosperity Kids Working Group Report**

Ona Porter, president and chief executive officer, Prosperity Works; Janelle Johnson, senior analyst, Office of the State Auditor; David Buchholtz, Esq., board member, Prosperity Works; and Charles Wollmann, director of communications and legislative affairs, SIC, presented a report on child savings accounts (CSAs) for higher education expenses from the working group formed pursuant to House Memorial 64 of the 2017 regular session.

The memorial's focus on the value of CSAs centers on Prosperity Works, a privately funded program that establishes accounts for children born to mothers on Medicaid with an opening deposit of \$100 and matches up to \$200 per year of deposits made to those accounts for 10 years. The working group cited research showing that CSAs have been an effective way to combat poverty, in part because their accompanying "incentive accounts", which are set up for parents to use in an emergency, reduce the likelihood that a family will engage with predatory lenders. CSAs also have been found to increase savings, education outcomes, including higher education, and financial literacy. A pilot project in Albuquerque's South Valley area generated the highest savings rate in the nation.

The presenters requested, in accordance with statutory authority to appropriate tobacco settlement revenue funds for health and education programs, that a portion of the state's annual tobacco settlement funds be directed to the Prosperity Works program to expand the program beyond what has been done to date with private money. Other possible structures for creating a revenue stream to expand CSAs include tax credits for donations to the program. Mr. Buchholtz suggested that using public funds for the CSA program might not violate the Anti-Donation Clause of the Constitution of New Mexico. While the presenters did not bring a piece of legislation for the committee to consider on the topic, they noted that legislation might be introduced during the 2018 session.

On questioning, the presenters and committee members discussed the value of CSAs in fighting poverty and the possibility of having the CSA program later return its earnings to the state if an appropriation is made from the program fund.

**Public Comment**

Laurel McCloskey, Chronic Disease Prevention Council (CDPC), spoke in support of Senator Morales' bill to increase the cigarette tax, citing tobacco use as one of the risk factors in chronic disease and tax increases as a proven way to decrease smoking incidence in youth.

Suzanne Lawson, CDPC, spoke in support of the tax increase as well, citing her experience with family members who died from lung cancer and tumors.

**Adjournment**

There being no further business before the committee, the fourth meeting of the TSROC for the 2017 interim adjourned at 12:05 p.m.



ENDORSED LEGISLATION  
AND APPROPRIATIONS



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SENATE BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO TAXATION; INCREASING THE CIGARETTE TAX RATES;  
INCREASING THE TOBACCO PRODUCTS TAX RATE; INCLUDING E-  
CIGARETTES IN THE DEFINITION OF "TOBACCO PRODUCTS" IN THE  
TOBACCO PRODUCTS TAX ACT; DISTRIBUTING THE NEW REVENUE FROM THE  
INCREASES IN THE CIGARETTE TAX AND THE TOBACCO PRODUCTS TAX TO  
THE PUBLIC SCHOOL FUND FOR THE STATE EQUALIZATION GUARANTEE  
DISTRIBUTION; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

**SECTION 1.** Section 7-1-6.11 NMSA 1978 (being Laws 1983,  
Chapter 211, Section 16, as amended by Laws 2017, Chapter 34,  
Section 2 and by Laws 2017, Chapter 63, Section 9) is amended  
to read:

"7-1-6.11. DISTRIBUTIONS OF CIGARETTE TAXES.--

A. A distribution pursuant to Section 7-1-6.1 NMSA

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1 1978 shall be made to the comprehensive cancer center at the  
2 university of New Mexico health sciences center in an amount  
3 equal to [~~eighty-three~~] forty-six hundredths percent of the net  
4 receipts, exclusive of penalties and interest, attributable to  
5 the cigarette tax.

6 B. A distribution pursuant to Section 7-1-6.1 NMSA  
7 1978 in an amount equal to [~~eight and eighty-nine~~] four and  
8 eighty-three hundredths percent of the net receipts, exclusive  
9 of penalties and interest, attributable to the cigarette tax,  
10 shall be made, on behalf of and for the benefit of the  
11 university of New Mexico health sciences center, to the New  
12 Mexico finance authority.

13 C. A distribution pursuant to Section 7-1-6.1 NMSA  
14 1978 in an amount equal to [~~three and seventy-four~~] two and  
15 four-hundredths percent of the net receipts, exclusive of  
16 penalties and interest, attributable to the cigarette tax shall  
17 be made to the New Mexico finance authority for land  
18 acquisition and the planning, designing, construction and  
19 equipping of department of health facilities or improvements to  
20 such facilities.

21 D. A distribution pursuant to Section 7-1-6.1 NMSA  
22 1978 in an amount equal to [~~nine and seventy-seven hundredths~~]  
23 five and three-tenths percent of the net receipts, exclusive of  
24 penalties and interest, attributable to the cigarette tax shall  
25 be made to the New Mexico finance authority for deposit in the

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1 credit enhancement account created in the authority.

2 E. A distribution pursuant to Section 7-1-6.1 NMSA  
3 1978 in an amount equal to [~~sixty-two~~] thirty-five hundredths  
4 percent of the net receipts, exclusive of penalties and  
5 interest, attributable to the cigarette tax shall be made, on  
6 behalf of and for the benefit of the rural county cancer  
7 treatment fund, to the New Mexico finance authority.

8 F. A distribution pursuant to Section 7-1-6.1 NMSA  
9 1978 in an amount equal to forty-five and fifty-six hundredths  
10 percent of the net receipts, exclusive of penalties and  
11 interest, attributable to the cigarette tax shall be made to  
12 the public school fund for the state equalization guarantee  
13 distribution."

14 SECTION 2. A new section of the Tax Administration Act is  
15 enacted to read:

16 "[NEW MATERIAL] DISTRIBUTION--TOBACCO PRODUCTS TAX TO THE  
17 PUBLIC SCHOOL FUND FOR THE STATE EQUALIZATION GUARANTEE  
18 DISTRIBUTION.--A distribution pursuant to Section 7-1-6.1 NMSA  
19 1978 in an amount equal to sixty percent of the net receipts,  
20 exclusive of penalties and interest, attributable to the  
21 tobacco products tax shall be made to the public school fund  
22 for the state equalization guarantee distribution."

23 SECTION 3. Section 7-12-2 NMSA 1978 (being Laws 1971,  
24 Chapter 77, Section 2, as amended) is amended to read:

25 "7-12-2. DEFINITIONS.--As used in the Cigarette Tax Act:

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1                   A. "cigarette" means:

2                   (1) any roll of tobacco or any substitute for  
3 tobacco wrapped in paper or in any substance not containing  
4 tobacco;

5                   (2) any roll of tobacco that is wrapped in any  
6 substance containing tobacco, other than one hundred percent  
7 natural leaf tobacco, which, because of its appearance, the  
8 type of tobacco used in the filler, its packaging and labeling,  
9 or its marketing and advertising, is likely to be offered to,  
10 or purchased by, consumers as a cigarette, as described in  
11 Paragraph (1) of this subsection;

12                   (3) bidis and kreteks; or

13                   (4) any other roll of tobacco that is defined  
14 as a "cigarette" in Subsection D of Section 6-4-12 NMSA 1978;

15                   B. "close of business" means that time when a  
16 business ceases to operate for the remainder of the day or  
17 12:00 a.m., if the business is open and conducting business at  
18 12:00 a.m.;

19                   C. "contraband cigarettes" means cigarette packages  
20 with counterfeit stamps, counterfeit cigarettes, cigarettes  
21 that have false or fraudulent manufacturing labels, cigarettes  
22 not sold in packages of five, ten, twenty or twenty-five,  
23 cigarette packages without the tax, tax-credit or tax-exempt  
24 stamps required by the Cigarette Tax Act and cigarettes  
25 produced by a manufacturer or in a brand family not included in

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1 the directory;

2 D. "department" means the taxation and revenue  
3 department, the secretary of taxation and revenue or any  
4 employee of the department exercising authority lawfully  
5 delegated to that employee;

6 E. "directory" means a listing of tobacco product  
7 manufacturers and brand families that is developed, maintained  
8 and published by the attorney general under the Tobacco Escrow  
9 Fund Act;

10 F. "distributor" means a person licensed pursuant  
11 to the Cigarette Tax Act to sell or distribute cigarettes in  
12 New Mexico. "Distributor" does not include:

13 (1) a retailer;

14 (2) a cigarette manufacturer, export warehouse  
15 proprietor or importer with a valid permit pursuant to 26  
16 U.S.C. 5713, if that person sells cigarettes in New Mexico only  
17 to distributors that hold valid licenses under the laws of a  
18 state or sells to an export warehouse proprietor or to another  
19 manufacturer; or

20 (3) a common or contract carrier transporting  
21 cigarettes pursuant to a bill of lading or freight bill, or a  
22 person who ships cigarettes through the state by a common or  
23 contract carrier pursuant to a bill of lading or freight bill;

24 G. "license" means a license granted pursuant to  
25 the Cigarette Tax Act that authorizes the holder to conduct

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1 business as a manufacturer or distributor of cigarettes;

2 H. "manufacturer" means a person that manufactures,  
3 fabricates, assembles, processes or labels a cigarette or that  
4 imports from outside the United States, directly or indirectly,  
5 a finished cigarette for sale or distribution in the United  
6 States;

7 I. "master settlement agreement" means the  
8 settlement agreement and related documents entered into on  
9 November 23, 1998 by the state and leading United States  
10 tobacco product manufacturers;

11 J. "package" means an individual pack, box or other  
12 container; "package" does not include a container that itself  
13 contains other containers, such as a carton of cigarettes;

14 K. "qualifying tribal cigarette tax" means an  
15 excise, privilege or similar tax at a minimum rate of:

16 (1) [~~three and seventy-five hundredths cents~~  
17  ~~(\$.0375)~~] eleven and one-fourth cents (\$.1125) per cigarette if  
18 the cigarettes are packaged in lots of twenty or twenty-five;

19 (2) [~~seven and one-half cents (\$.075)~~] twenty-  
20 two and one-half cents (\$.225) per cigarette if the cigarettes  
21 are packaged in lots of ten; or

22 (3) [~~fifteen cents (\$.15)~~] forty-five cents  
23  (\$.45) per cigarette if the cigarettes are packaged in lots of  
24 five;

25 L. "retailer" means a person, whether located

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1 within or outside of New Mexico, that sells cigarettes at  
2 retail to a consumer in New Mexico and the sale is not for  
3 resale;

4 M. "stamp" means an adhesive label issued and  
5 authorized by the department to be affixed to cigarette  
6 packages for excise tax purposes and upon which is printed a  
7 serial number and the words "State of New Mexico" and "tobacco  
8 tax";

9 N. "tax stamp" means a stamp that has a specific  
10 cigarette tax value pursuant to the Cigarette Tax Act;

11 O. "tax-credit stamp" means a stamp that indicates  
12 the cigarette package bearing the stamp is to be or has been  
13 sold by a retailer located on land of a tribe that has imposed  
14 a qualifying tribal cigarette tax;

15 P. "tax-exempt stamp" means a stamp that indicates  
16 a tax-exempt status pursuant to the Cigarette Tax Act;

17 Q. "tribal member" means a person who is recognized  
18 by the governing body of an Indian tribe to be an enrolled  
19 member of that Indian tribe;

20 R. "tribe" means a federally recognized Indian  
21 nation, tribe or pueblo located wholly or partially in New  
22 Mexico, including:

23 (1) a political subdivision, agency or  
24 department of a tribe;

25 (2) an incorporated or unincorporated

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1 enterprise of a tribe, one or more tribes or a political  
2 subdivision of a tribe; or

3 (3) a corporation considered to be an Indian  
4 or a tribe by the federal government or the state; and

5 S. "tribe's land" means the reservation, pueblo  
6 grant or trust land of a tribe and property held by the United  
7 States in trust jointly for the nineteen New Mexico Indian  
8 pueblos pursuant to Public Law 95-232."

9 SECTION 4. Section 7-12-3 NMSA 1978 (being Laws 1971,  
10 Chapter 77, Section 3, as amended) is amended to read:

11 "7-12-3. EXCISE TAX ON CIGARETTES--RATES.--

12 A. For the privilege of selling, giving or  
13 consuming cigarettes in New Mexico, there is levied an excise  
14 tax at the following rates for each cigarette sold, given or  
15 consumed in this state:

16 (1) [~~eight and three-tenths cents (\$.083)~~]  
17 fifteen and eight-tenths cents (\$.158) if the cigarettes are  
18 packaged in lots of twenty or twenty-five;

19 (2) [~~sixteen and six-tenths cents (\$.166)~~]  
20 thirty-one and six-tenths cents (\$.316) if the cigarettes are  
21 packaged in lots of ten; or

22 (3) [~~thirty-three and two-tenths cents~~  
23 ~~(\$.332)~~] sixty-three and two-tenths cents (\$.632) if the  
24 cigarettes are packaged in lots of five.

25 B. The tax imposed by this section shall be

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1 referred to as the "cigarette tax"."

2 SECTION 5. Section 7-12A-2 NMSA 1978 (being Laws 1986,  
3 Chapter 112, Section 3, as amended) is amended to read:

4 "7-12A-2. DEFINITIONS.--As used in the Tobacco Products  
5 Tax Act:

6 A. "department" means the taxation and revenue  
7 department, the secretary or any employee of the department  
8 exercising authority lawfully delegated to that employee by the  
9 secretary;

10 B. "distribute" means to sell or to give;

11 C. "e-cigarette":

12 (1) means any electronic oral device that can  
13 be used to provide a vapor or aerosol of nicotine or any other  
14 substance to the person inhaling from the device; and

15 (2) includes any such device, or any part  
16 thereof, whether manufactured, distributed, marketed or sold as  
17 an e-cigarette, e-cigar, e-pipe or any other product name or  
18 descriptor;

19 [~~G-~~] D. "engaging in business" means carrying on or  
20 causing to be carried on any activity with the purpose of  
21 direct or indirect benefit;

22 [~~D-~~] E. "first purchaser" means a person engaging  
23 in business in New Mexico [~~who~~] that manufactures tobacco  
24 products or [~~who~~] that purchases or receives on consignment  
25 tobacco products from any person outside of New Mexico, which

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1 tobacco products are to be distributed in New Mexico in the  
2 ordinary course of business;

3 [E-] F. "person" means any individual, estate,  
4 trust, receiver, cooperative association, club, corporation,  
5 company, firm, partnership, joint venture, syndicate, limited  
6 liability company, limited liability partnership, other  
7 association or gas, water or electric utility owned or operated  
8 by a county or municipality or other entity of the state;  
9 "person" also means, to the extent permitted by law, a federal,  
10 state or other governmental unit or subdivision or an agency,  
11 department or instrumentality;

12 [F-] G. "product value" means the amount paid, net  
13 of any discounts taken and allowed, for tobacco products or, in  
14 the case of tobacco products received on consignment, the value  
15 of the tobacco products received or, in the case of tobacco  
16 products manufactured and sold in New Mexico, the proceeds from  
17 the sale by the manufacturer of the tobacco products; and

18 [G-] H. "tobacco product" means:

19 (1) any product, other than cigarettes, made  
20 of or derived from [or containing] tobacco or nicotine that is  
21 intended for human consumption, whether smoked, heated, chewed,  
22 absorbed, dissolved, inhaled, snorted, sniffed or ingested by  
23 any other means, including cigars, chewing tobacco, e-  
24 cigarettes, pipe tobacco or snuff; and

25 (2) any component, part or accessory used to

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1 consume tobacco but does not include any product that has been  
2 approved by the United States food and drug administration for  
3 sale as a tobacco cessation product or for other therapeutic  
4 purposes where such product is marketed and sold solely for  
5 such an approved use."

6 SECTION 6. Section 7-12A-3 NMSA 1978 (being Laws 1986,  
7 Chapter 112, Section 4, as amended) is amended to read:

8 "7-12A-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS  
9 "TOBACCO PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

10 A. For the privilege of engaging in business to  
11 manufacture [or acquisition of], acquire or distribute tobacco  
12 products [in New Mexico to be distributed] in the ordinary  
13 course of business and for the [~~consumption of~~] privilege of  
14 consuming tobacco products in New Mexico, there is imposed an  
15 excise tax at the rate of [~~twenty-five~~] seventy-six percent of  
16 the product value of the tobacco products.

17 B. The tax imposed by Subsection A of this section  
18 may be referred to as the "tobacco products tax".

19 C. The tobacco products tax shall be paid by the  
20 first purchaser on or before the twenty-fifth day of the month  
21 following the month in which the taxable event occurs."

22 SECTION 7. EFFECTIVE DATE.--The effective date of the  
23 provisions of this act is July 1, 2018.



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SENATE BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC HEALTH; AMENDING THE TOBACCO PRODUCTS, E-CIGARETTE AND NICOTINE LIQUID CONTAINER ACT TO BAN THE SALE OF TOBACCO PRODUCTS, E-CIGARETTES OR NICOTINE LIQUID CONTAINERS TO PERSONS UNDER TWENTY-ONE YEARS OF AGE; DEFINING "TOBACCO PRODUCTS".

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

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

"30-49-2. DEFINITIONS.--As used in the Tobacco Products, E-Cigarette and Nicotine Liquid Container Act:

A. "child-resistant" means a package or container that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a

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1 reasonable time and not difficult for normal adults to use  
2 properly, but does not mean a package or container that all  
3 such children cannot open or obtain a toxic or harmful amount  
4 within a reasonable time;

5 B. "e-cigarette":

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

11 (2) includes any such device, or any part  
12 thereof, whether manufactured, distributed, marketed or sold as  
13 an e-cigarette, e-cigar, e-pipe or any other product, name or  
14 descriptor; but

15 (3) does not include any product regulated as  
16 a drug or device by the United States food and drug  
17 administration under the Federal Food, Drug, and Cosmetic Act  
18 [~~21 U.S.C. Section 301 et seq.~~];

19 C. "minor" means an individual who is less than  
20 [~~eighteen~~] twenty-one years of age [~~and~~]. "Minor" does not  
21 include active duty military personnel who are eighteen years  
22 of age or older who present an identification card issued by  
23 the United States armed forces as proof of age for this purpose  
24 or individuals who were eighteen to twenty-one years of age on  
25 July 1, 2018;

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1           D. "nicotine liquid container" means a bottle or  
2 other container of any substance containing nicotine where the  
3 substance is sold, marketed or intended for use in an e-  
4 cigarette; and

5           E. "tobacco product" means:

6                   (1) any product made of or derived from  
7 tobacco or nicotine that is intended for human consumption,  
8 whether smoked, heated, chewed, absorbed, dissolved, inhaled,  
9 snorted, sniffed or ingested by any other means, including  
10 cigars, cigarettes, chewing tobacco, e-cigarettes, pipe tobacco  
11 or snuff; and

12                   (2) any component, part or accessory used to  
13 consume tobacco but does not include any product that has been  
14 approved by the United States food and drug administration for  
15 sale as a tobacco cessation product or for other therapeutic  
16 purposes where such product is marketed and sold solely for  
17 such an approved use."

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

20           "30-49-5. REFUSAL TO SELL TOBACCO PRODUCTS, E-CIGARETTES  
21 OR NICOTINE LIQUID CONTAINERS TO PERSON UNABLE TO PRODUCE  
22 IDENTITY CARD.--A person selling goods at retail or wholesale  
23 may refuse to sell tobacco products, e-cigarettes or nicotine  
24 liquid containers to a person who is unable to produce an  
25 identity card as evidence that the person is [~~eighteen years of~~

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1 ~~age or over]~~ not prohibited from purchasing tobacco products,  
2 e-cigarettes or nicotine liquid containers."

3 SECTION 3. Section 30-49-9 NMSA 1978 (being Laws 1993,  
4 Chapter 244, Section 9, as amended) is amended to read:

5 "30-49-9. SIGNS--POINT OF SALE.--A person, firm,  
6 corporation, partnership or other entity engaged in the sale at  
7 retail of tobacco products, e-cigarettes or nicotine liquid  
8 containers shall prominently display in the place where tobacco  
9 products, e-cigarettes or nicotine liquid containers are sold  
10 and where a tobacco product, e-cigarette or nicotine liquid  
11 container vending machine is located a printed sign or decal  
12 that reads as follows:

13 "A PERSON LESS THAN [~~18~~] 21 YEARS OF AGE WHO PURCHASES A  
14 TOBACCO PRODUCT, AN E-CIGARETTE OR A NICOTINE LIQUID CONTAINER  
15 [~~IS~~] MAY BE SUBJECT TO A FINE OF UP TO \$100 OR UP TO 48 HOURS  
16 OF COMMUNITY SERVICE.

17 A PERSON WHO SELLS A TOBACCO PRODUCT, AN E-CIGARETTE OR A  
18 NICOTINE LIQUID CONTAINER TO A PERSON LESS THAN [~~18~~] 21 YEARS  
19 OF AGE [~~IS~~] MAY BE SUBJECT TO A FINE OF UP TO \$1,000 AND IS  
20 GUILTY OF A CRIMINAL MISDEMEANOR."

Tobacco Settlement Fund Revenue  
FY18 Appropriations

(in thousands of dollars)		FY16	FY17	FY18
<b>Estimated Tobacco Revenues</b>				
Beginning Balance Permanent Fund		216,400.0	110,400.0	133,800.0
Estimated Tobacco Revenue		39,600.0	54,300.0	39,000.0
Appropriation to Program Fund		(18,500.0)	(18,500.0)	(19,500.0)
Gains/Losses		3,600.0	6,100.0	7,400.0
Additional Transfer to Program Fund		(21,600.0)	(18,500.0)	(19,500.0)
Transfer to GF Appropriation Account		(109,100.0)	0.0	(129,200.0)
<b>Total Program Fund Appropriations</b>		<b>40,100.0</b>	<b>37,000.0</b>	<b>39,000.0</b>
<b>Ending Balance Permanent Fund</b>		<b>110,400.0</b>	<b>133,800.0</b>	<b>12,000.0</b>
<b>Tobacco Fund Appropriations</b>				
<b>Agency</b>	<b>Purpose</b>			
609 Indian Affairs	Tobacco Cessation Programs	249.3	249.3	249.3
630 Human Services Department	Medicaid -- Breast and Cervical Cancer Treatment	1,312.4	1,255.4	1,255.4
630 Human Services Department	Medicaid	7,907.3	7,563.9	8,563.9
630 Human Services Department	Medicaid, Contingent on Legislation	20,800.0	18,500.0	19,500.0
<b>Sub-total Human Services Department</b>		<b>30,019.7</b>	<b>27,319.3</b>	<b>29,319.3</b>
665 Department of Health	Tobacco Cessation and Prevention	5,682.0	5,435.2	5,435.2
665 Department of Health	Diabetes Prevention and Control	748.0	715.5	715.5
665 Department of Health	HIV/AIDS Services	293.0	293.0	293.0
665 Department of Health	Breast and Cervical Cancer Screening	128.6	128.6	128.6
<b>Sub-total Department of Health</b>		<b>6,851.6</b>	<b>6,572.3</b>	<b>6,572.3</b>
952 University of New Mexico HSC	Instruction and General Purposes	607.9	581.5	581.5
952 University of New Mexico HSC	Research in Genomics and Environmental Health	979.8	937.2	937.4
952 University of New Mexico HSC	Poison Control Center	590.2	590.2	590.2
952 University of New Mexico HSC	Pediatric Oncology Program	261.4	250.0	250.0
952 University of New Mexico HSC	Specialty Education in Trauma	261.4	250.0	250.0
952 University of New Mexico HSC	Specialty Education in Pediatrics	261.4	250.0	250.0
<b>Sub-total University of New Mexico HSC</b>		<b>2,962.1</b>	<b>2,859.1</b>	<b>2,859.1</b>
<b>Total Appropriations</b>		<b>40,082.7</b>	<b>37,000.0</b>	<b>39,000.0</b>







LEGISLATIVE COUNCIL SERVICE  
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