



NEW MEXICO LEGISLATURE

# TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

2020 INTERIM FINAL REPORT

LEGISLATIVE COUNCIL SERVICE  
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## INTERIM SUMMARY



## **Tobacco Settlement Revenue Oversight Committee 2020 Interim Summary**

New Mexico receives approximately \$30 million to \$40 million annually in tobacco settlement revenue. Pursuant to Section 6-4-9 NMSA 1978, tobacco settlement revenue is distributed to the Tobacco Settlement Permanent Fund (TS Permanent Fund). A distribution of one-half of the annual revenue is made to the Tobacco Settlement Program Fund (TS Program Fund), and one-half remains in the TS Permanent Fund, which serves as a reserve fund. Annual settlement payments may be subject to challenge through arbitration by participating tobacco manufacturers.

Section 6-4-10 NMSA 1978 requires that money in the TS Program Fund be expended for health and education purposes. Pursuant to Section 2-19-1 NMSA 1978, the Tobacco Settlement Revenue Oversight Committee (TSROC) is required to monitor the use of tobacco settlement revenue, review evaluations of programs receiving funding from tobacco settlement revenue, prepare recommendations of program funding levels for the next fiscal year and make recommendations as necessary for changes in legislation regarding the use of the tobacco settlement revenue.

Current tobacco settlement funding recipients are the Department of Health, the Human Services Department, the Indian Affairs Department and the University of New Mexico Health Sciences Center. During the 2020 interim, the committee heard presentations from each entity, which addressed the entity's current use of funding as well as its funding requests for fiscal year 2022.

The TSROC met on November 30, 2020 and voted to recommend adoption of all funding requests as presented. A summary spreadsheet of the funding requests is included in this report. The TSROC also voted to endorse three bills. The first endorsed bill would outlaw flavored tobacco products. The second endorsed bill would allow maximum local control under the provisions of the Tobacco Products Act. The third endorsed bill would allow the remaining fifty percent of funding in the TS Permanent Fund to be distributed to the TS Program Fund in fiscal year 2022. Copies of the endorsed bills are included in this report.





## WORK PLAN AND MEETING SCHEDULE



**2020 PROPOSED  
WORK PLAN AND MEETING SCHEDULE  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**Members**

Sen. Gabriel Ramos, Co-Chair  
Rep. Elizabeth "Liz" Thomson, Co-Chair  
Rep. Joanne J. Ferrary

Sen. Candace Gould  
Rep. Gregg Schmedes  
Sen. John Arthur Smith

**Advisory Members**

Rep. Gail Chasey  
Sen. Linda M. Lopez  
Sen. Mary Kay Papen

Sen. Sander Rue  
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 2020 interim, the TSROC will:

- (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 2022 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  
2020 Proposed Meeting Schedule**

<u>Date</u>	<u>Location*</u>
September 15	Video Conference
November 30	Video Conference

\*The State Capitol will be closed to the public, but meetings will be webcast. Committee members will attend via a video conference platform.

## AGENDAS AND MINUTES



Revised: September 11, 2020

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

**September 15, 2020  
Video Conference**

**Tuesday, September 15**

- 9:30 a.m.           **Call to Order and Introductions**  
—Representative Elizabeth "Liz" Thomson, Co-Chair  
—Senator Gabriel Ramos, Co-Chair
- 10:00 a.m.       (1)   **Post-Session Update: Tobacco Settlement Permanent and Program Funds**  
—RubyAnn Esquibel, Principal Fiscal Analyst, Legislative Finance Committee
- 11:00 a.m.       (2)   **Update on Master Settlement Agreement**  
—Tania Maestas, Chief Deputy Attorney General, Civil Affairs, Office of the Attorney General (OAG)  
—Joe Dworak, Director, Litigation Division, OAG
- 12:00 noon       **Lunch**
- 1:00 p.m.       (3)   **University of New Mexico (UNM) Health Sciences Center (HSC)**  
—Richard Larson, M.D., Ph.D., Executive Vice Chancellor and Vice Chancellor for Research, UNM HSC
- 1:30 p.m.       (4)   **Department of Health (DOH)**  
—Josh Swatek, Program Manager, Adult Viral Hepatitis, Harm Reduction Program, DOH  
—Beth Pinkerton, Program Manager, Breast and Cervical Cancer Early Detection Program, DOH  
—David Tompkins, Manager, Community Health Initiatives, Tobacco Use Prevention and Control Program, DOH  
—Judith Gabriele, Deputy Bureau Chief, Population and Community Health Bureau, and Acting Program Manager, Diabetes Prevention and Control Program, DOH

2:00 p.m. (5) Human Services Department (HSD)  
—Loretta Cordova, Bureau Chief, Quality Bureau, Medical Assistance  
Division, HSD

2:30 p.m. (6) **Indian Affairs Department (IAD)**  
—Drew Roybal-Chavez, Chief Financial Officer, Administrative Services  
Division, IAD

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

3:30 p.m.                      **Adjourn**

\*The State Capitol is closed to the public, but the meeting will be webcast and can be viewed by clicking the video icon beneath the meeting agenda on the Tobacco Settlement Revenue Oversight Committee [web page](#). Members of the public may make comments during the public comment portion of the meeting by following instructions under the "Extra Information" portion of the [web page](#).



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

**September 15, 2020  
Video Conference Meeting**

The first meeting of the Tobacco Settlement Revenue Oversight Committee was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on September 15, 2020 at 9:43 a.m. by video and audio conference via an online platform.

**Present**

Sen. Gabriel Ramos, Co-Chair  
Rep. Elizabeth "Liz" Thomson, Co-Chair  
Rep. Joanne J. Ferrary

**Absent**

Sen. Candace Gould  
Rep. Gregg Schmedes  
Sen. John Arthur Smith

**Advisory Members**

Rep. Gail Chasey  
Sen. Linda M. Lopez  
Sen. Mary Kay Papen

Sen. Sander Rue  
Rep. Jim R. Trujillo

**Staff**

Elisabeth Johnson, Staff Attorney, Legislative Council Service (LCS)  
Lenaya Montoya, Staff Attorney, LCS  
Erin Bond, Research Assistant, LCS  
Rebecca Griego, Records Officer, LCS

**Handouts**

Handouts and other written testimony are in the meeting file and posted on the legislature's website.

**Tuesday, September 15**

**Welcome and Introductions (9:43 a.m.)**

Representative Thomson welcomed the committee and introduced the presentations of the day.

**Post-Session Update: Tobacco Settlement Permanent and Program Funds (9:44 a.m.)**

RubyAnn Esquibel, principal fiscal analyst, Legislative Finance Committee (LFC), and Dawn Iglesias, chief economist, LFC, updated the committee on the status of the tobacco settlement permanent and program funds. The presentation can be found here:

<https://www.nmlegis.gov/handouts/TSROC%20091520%20Item%201%20Tobacco%20Settlement%20Fund%20Revenue%20FY22.pdf>.

Comments from committee members addressed the following topics:

- protection of the funds from being swept for fiscal year 2022;
- \$17 million of the funds were used for Medicaid;
- clarification on the enabling statute of the tobacco settlement funds and what the funds can be used for;
- directing more money to tobacco use prevention programs;
- the fiscal outlook of Medicaid for fiscal year 2021;
- reviewing other ways of funding the state budget without using the tobacco settlement funds; and
- an estimate of how much the tobacco settlement funds would have now if the funds had not been swept in the past.

#### **Update on Master Settlement Agreement (MSA) (10:25 a.m.)**

Tania Maestas, chief deputy attorney general, Civil Affairs, Office of the Attorney General (OAG); Joe Dworak, director, Litigation Division, OAG; and Phillip Bachicha, special projects director, OAG, updated the committee on the MSA.

Mr. Bachicha provided an update regarding the 2004 MSA payment arbitration. He stated that the arbitration would take place in March or April of 2021 and that the OAG is currently working on discovery. Mr. Bachicha stated that this arbitration may affect the fiscal year 2022 MSA payment. He explained that the tobacco companies and the OAG have decided to arbitrate three years, 2005, 2006 and 2007, as one and that they are currently in the process of picking a panel of arbitrators. Mr. Bachicha further explained that there will be a common case arbitration among 10 states involved in the MSA with the tobacco companies and that this may happen before the end of 2021. The state-specific arbitration would take place the following year.

Mr. Dworak provided the committee with general updates on litigation proceedings and stated that the states involved in arbitration have been trying to consolidate payment years to make arbitration easier and to help address the backlog in arbitration. He stated that the 2004 arbitration was only the second time that states had gone to arbitration and that the 2003 payment year was the first time. Mr. Dworak stated that of the 45 states involved in the MSA, approximately one-half of those states receive portions of the funds to help with enforcement of the MSAs in their respective states.

Comments from committee members addressed the following topics:

- the cost to the OAG to handle the tobacco settlement funds; the OAG has three designated staff members for the tobacco settlement and has to pay for experts and outside counsel for arbitration;

- whether the OAG has a line item in its budget for tobacco settlement litigation and whether it receives funding from the legislature; the OAG does not receive funds from the legislature for the litigation, but it has been looking into how it can request funding from the legislature;
- whether arbitrating three years of MSA payments at the same time is beneficial to the state; it is beneficial because it will speed up the arbitration process;
- the interest or penalties on payments that are arbitrated;
- the new tobacco licensing laws that were put into law during the 2020 legislative session and how those laws will affect the OAG;
- enforcement oversight and how this affects MSA arbitration; and
- legislative options to strengthen arbitration efforts, including using New Mexico tobacco settlement funds to help enforce the provisions of the MSA.

### **University of New Mexico (UNM) Health Sciences Center (HSC) (1:02 p.m.)**

Dr. Richard Larson, executive vice chancellor and vice chancellor for research, UNM HSC, updated the committee on what the UNM HSC has done and expects to do with the tobacco settlement funds. The presentation can be found here:

<https://www.nmlegis.gov/handouts/TSROC%20091520%20Item%203%20UNM%20Health%20Sciences%20Center.pdf>.

Comments from committee members addressed the following topics:

- a clarification on the device that a person blows into to test if that person is taking medications, which device was originally designed to test for drugs to treat tuberculosis;
- the difficulty receiving medications through the mail due to postal delays because of the COVID-19 pandemic;
- the commercialization of services developed by UNM and potential reimbursement for research;
- the patent process at UNM and how proceeds are disbursed by UNM;
- discussions with the LFC to increase the tobacco settlement fund disbursement to UNM;
- encouragement of start-up companies to stay in New Mexico and investment in those companies;
- an update on multiple sclerosis research at UNM;
- appreciation of the UNM hospitals and all that they do for the entire state; and
- appointment times at the UNM dental clinic that serves patients with special needs.

### **Department of Health (DOH) (1:41 p.m.)**

Cathy Rocke, deputy director of programs, Public Health Division, DOH; Beth Pinkerton, program manager, Breast and Cervical Cancer Early Detection Program, DOH; Josh Swatek, program manager, Adult Viral Hepatitis, Harm Reduction Program, DOH; David Tompkins, manager, Community Health Initiatives, Tobacco Use Prevention and Control (TUPAC)

Program, DOH; and Judith Gabriele, deputy bureau chief, Population and Community Health Bureau, and acting program manager, Diabetes Prevention and Control Program, DOH, updated the committee on DOH programs that receive tobacco settlement funds. The presentation can be found here:

<https://www.nmlegis.gov/handouts/TSROC%20091520%20Item%204%20DOH%20Combined%20FY22%20TSROC%20Funding%20Request.pdf>.

Comments from committee members addressed the following topics:

- the statistics on breast cancer occurrence in men and women under 50 years of age;
- the eligibility of patients whose incomes are 250% above the federal poverty level to enroll in Medicaid or other health insurance plans to access cancer treatment resources;
- hepatitis C treatment costs and the difference in prices from previous years;
- the statistics on incarcerated individuals with hepatitis C in New Mexico;
- the decision behind providing clean syringes through the syringe exchange program;
- the barriers for the one-third of people trying to access substance use treatment;
- the targeted tobacco use and prevention programs for minority populations;
- the opportunities for involvement in the tobacco use and prevention programs;
- banning tobacco use in racinos and casinos;
- smoke-free multi-unit housing;
- tracking quit line users; whether those users are traditional smokers or whether they vape;
- vaping companies submitting products to the United States Food and Drug Administration to be approved as tobacco cessation products;
- the use by managed care organizations (MCOs) of the state quit line for their patients;
- the statistics on diabetes footcare during telehealth;
- research on whether vaping also increases the risk of diabetes, as traditional smoking does;
- whether DOH programs are using the NM ECHO program or other telehealth programs;
- whether DOH programs will continue using online platforms to help rural patients after the COVID-19 pandemic;
- partners to the TUPAC program; whether there are TUPAC programs in southern New Mexico;
- media outreach for TUPAC programs in southern New Mexico;
- the funding needed to campaign to raise awareness about the new tobacco laws in the state;
- educational health standards and whether tobacco prevention education is mandated in schools; and
- legislative considerations for the 2021 legislative session.

**Human Services Department (HSD) (3:22 p.m.)**

Loretta Cordova, bureau chief, Quality Bureau, Medical Assistance Division, HSD, updated the committee on HSD programs that receive tobacco settlement funds. The presentation can be found here:

<https://www.nmlegis.gov/handouts/TSROC%20091520%20Item%205%20Centennial%20Care%202.0%20Tobacco%20prevention%20and%20cessation%20services.pdf>.

Comments from committee members addressed the following topics:

- the increase in Medicaid expansion;
- MCOs that receive funding from counseling and whether those MCOs use their own quit line or the state's TUPAC program quit line;
- the ratio of the provision of services by MCOs to the provision of services by the state and whether funds should be allocated to organizations that provide more services; and
- tracking MCOs and the services they provide and potential cost shifting to the state.

**Indian Affairs Department (IAD) (3:54 p.m.)**

Drew Roybal-Chavez, chief financial officer, Administrative Services Division, IAD, updated the committee on IAD programs that receive tobacco settlement funds. The presentation can be found here:

<https://www.nmlegis.gov/handouts/TSROC%20091520%20Item%206%20IAD%20Tobacco%20Cessation%20and%20Prevention%20Programs.pdf>.

Comments from committee members addressed the following topics:

- the rate of e-cigarette use among Native American youth and whether it is similar to that of non-Native American youth;
- the reversion of some of the funding that was given to projects through the IAD; and
- the IAD's plan to allow programs to continue operating virtually.

**Public Comment**

There was no public comment.

**Adjournment**

There being no further business before the committee, the meeting adjourned at 4:06 p.m.



Revised: November 23, 2020

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

**November 30, 2020  
Video Conference**

**Monday, November 30**

- 9:30 a.m.           **Call to Order and Introductions**  
—Senator Gabriel Ramos, Co-Chair, Tobacco Settlement Revenue Oversight Committee (TSROC)  
—Representative Elizabeth "Liz" Thomson, Co-Chair, TSROC
- 10:00 a.m.       (1)   **Review of Funding Requests and Recommendations to the Legislature for Fiscal Year 2022**  
—Elisabeth Johnson, Staff Attorney, Legislative Council Service  
—TBD, Department of Health  
—TBD, Human Services Department  
—Drew Roybal-Chavez, Chief Financial Officer, Indian Affairs Department  
—Richard Larson, M.D., Ph.D., Executive Vice Chancellor and Vice Chancellor for Research, University of New Mexico Health Sciences Center
- 11:00 a.m.       (2)   **Consideration of Proposed Legislation for Endorsement for the 2021 Legislative Session**  
—Senator Gabriel Ramos, Co-Chair, TSROC  
—Representative Elizabeth "Liz" Thomson, Co-Chair, TSROC  
• Tobacco: Outlaw Flavored Tobacco Products (.218181)  
• Tobacco Products Act: Add Provisions to Allow for Local Control (.218182)  
• Tobacco Settlement Permanent Fund: Requiring Remaining Fifty Percent Distribution to be Distributed to Tobacco Settlement Program Fund (.218526)
- 11:45 a.m.           **Public Comment\***
- 12:00 noon           **Adjourn**

\*The State Capitol is closed to the public, but the meeting will be webcast and can be viewed by clicking the video icon beneath the meeting agenda on the TSROC [web page](#). Members of the public may make comments during the public comment portion of the meeting by following instructions under the "Extra Information" portion of the [web page](#).





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

**November 30, 2020  
Video Conference Meeting**

The second meeting of the Tobacco Settlement Revenue Oversight Committee was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on November 30, 2020 at 9:40 a.m. by video and audio conference via an online platform.

**Present**

Sen. Gabriel Ramos, Co-Chair  
Rep. Elizabeth "Liz" Thomson, Co-Chair  
Rep. Joanne J. Ferrary

**Absent**

Sen. Candace Gould  
Rep. Gregg Schmedes  
Sen. John Arthur Smith

**Advisory Members**

Sen. Linda M. Lopez

Rep. Gail Chasey  
Sen. Mary Kay Papen  
Sen. Sander Rue

**Staff**

Elisabeth Johnson, Staff Attorney, Legislative Council Service (LCS)  
Lenaya Montoya, Staff Attorney, LCS  
Rebecca Griego, Records Officer, LCS  
Madelyn Lucas, Intern, LCS

**Minutes Approval**

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

**Handouts**

Handouts and other written testimony are in the meeting file and posted on the legislature's website.

**Monday, November 30**

**Update on the Status of the Tobacco Settlement Permanent and Program Funds (9:40 a.m.)**

RubyAnn Esquibel, principal fiscal analyst, Legislative Finance Committee (LFC), and Dawn Iglesias, chief economist, LFC, updated the committee on the status of the tobacco settlement permanent and program funds. The presentation materials can be found here:

[https://www.nmlegis.gov/handouts/TSROC%20113020%20Item%201%20LFC\\_Spreadsheet.pdf](https://www.nmlegis.gov/handouts/TSROC%20113020%20Item%201%20LFC_Spreadsheet.pdf).

Comments from committee members addressed the following topics:

- backfilling the funding of the special projects listed on lines 14 and below on the spreadsheet that the LFC provided; the LFC is trying to backfill as much as it can through general funds;
- the LFC and the Department of Finance and Administration will look into a \$12 million pro rata reduction to the programs;
- an explanation of the funds' ending balance of \$271 million;
- legislation to expend the second half of the tobacco funds generated in fiscal year (FY) 2022;
- the FY 2022 \$12 million revenue amount coming to the fund because of the tobacco settlement arbitration impact;
- expectations from the Office of the Attorney General on the impact of tobacco settlement arbitration to the tobacco settlement permanent and program funds;
- per the LFC proposal, the full \$12 million revenue to the Tobacco Settlement Permanent Fund will go to fund programs on a case-by-case scenario, and the remaining amount that would be needed to fully cover the program amounts would be backfilled through the General Fund for FY 2022;
- whether the programs were fully funded for FY 2021;
- whether the budgets of the departments that receive tobacco settlement funds were reduced during the 2020 first special session; and
- the potential for dipping into the Tobacco Settlement Permanent Fund to fund other programs.

**Review of Funding Requests and Recommendations to the Legislature for FY 2022 (10:20 a.m.)**

Ms. Johnson; Cathy Rocke, deputy director of programs, Public Health Division, Department of Health (DOH); Richard Larson, M.D., Ph.D., executive vice chancellor and vice chancellor for research, University of New Mexico (UNM) Health Sciences Center; Drew Roybal-Chavez, chief financial officer, Administrative Services Division, Indian Affairs Department; Aryan Showers, director, Office of Policy and Accountability, DOH; Andrew Gans, program manager, Adult Viral Hepatitis, Harm Reduction Program, DOH; Beth Pinkerton, program manager, Breast and Cervical Cancer Early Detection Program, DOH; Kenny Vigil, program manager, Diabetes Prevention and Control Program, DOH; and David Tompkins, program manager, Community Health Initiatives and the Tobacco Use Prevention and Control Program (TUPAC), DOH, presented the FY 2022 funding requests. The presentation materials can be found here:

[https://www.nmlegis.gov/handouts/TSROC%20113020%20Item%201%20TSROC\\_Funding\\_Request\\_Spreadsheet.pdf](https://www.nmlegis.gov/handouts/TSROC%20113020%20Item%201%20TSROC_Funding_Request_Spreadsheet.pdf).

Comments from committee members addressed the following topics:

- revisiting the use of other funds to help fund the tobacco programs;
- UNM's request to prioritize funding for research in genomics and environmental health and the poison center if there are potential cuts in funding;
- clarification that the UNM Cancer Center does not receive funding through the tobacco settlement funds because it receives funding through the cigarette tax distribution;
- the UNM poison control center has not seen a rise in calls regarding the consumption of hand sanitizer;
- the poison control center helped staff a call line for questions regarding the coronavirus disease 2019 and has fielded over 10,000 calls;
- a clarification from the DOH that it does backfill program costs with General Fund appropriations if the programs are not fully funded through the Tobacco Settlement Program Fund;
- the DOH would like to see the TUPAC and the Harm Reduction Program prioritized for tobacco settlement funding because those programs deal directly with smokers;
- whether medical care organizations (MCOs) still use the DOH quit line to help their members quit smoking; the Human Services Department has issued a directive to MCOs to use their own quit lines and tobacco cessation services; MCOs do not reimburse the DOH for using the DOH quit line; and
- there has been a decrease in the use of the quit line during the coronavirus disease 2019 pandemic.

A motion was made by Senator Lopez to approve the funding requests and to add the requests from UNM and the DOH to fully fund the respective requested programs, the motion was seconded by Representative Ferrary and was unanimously passed.

#### **Approval of Minutes (11:20 a.m.)**

Senator Ramos made a motion to approve the minutes of the September 15, 2020 meeting, Representative Ferrary seconded and the motion passed unanimously.

#### **Consideration of Proposed Legislation for Endorsement for the 2021 Legislative Session (11:21 a.m.)**

The committee considered the following proposed legislation for potential endorsement:

- a bill to outlaw flavored tobacco products (218181.1), which was endorsed by a three-to-one vote with Senator Ramos opposing;
- a bill to add provisions to the Tobacco Products Act to allow for local control (218182.1), which was endorsed by a three-to-one vote with Senator Ramos opposing; and
- a bill to require the remaining fifty percent distribution of the Tobacco Settlement Permanent Fund to be distributed to the Tobacco Settlement Program Fund (218526.1), which was endorsed unanimously.

Copies of the proposed legislation can be found here:

<https://www.nmlegis.gov/Committee/Handouts?CommitteeCode=TSROC&Date=11/30/2020&ItemNumber=2>.

**Public Comment**

There was no public comment.

**Adjournment**

There being no further business before the committee, the meeting adjourned at 11:37 a.m.

## ENDORSED LEGISLATION



underscored material = new  
[bracketed material] = delete

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HOUSE BILL  
**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**  
INTRODUCED BY

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT  
RELATING TO TOBACCO PRODUCTS; PROHIBITING THE SALE, POSSESSION  
OR PURCHASE OF FLAVORED TOBACCO PRODUCTS; DEFINING TERMS;  
CONFORMING CERTAIN NOTICE REQUIREMENTS; PROVIDING PENALTIES.

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

SECTION 1. Section 61-37-1 NMSA 1978 (being Laws 2020,  
Chapter 46, Section 1) is amended to read:

"61-37-1. SHORT TITLE.--~~[This act]~~ Chapter 61, Article 37  
NMSA 1978 may be cited as the "Tobacco Products Act"."

SECTION 2. A new section of the Tobacco Products Act is  
enacted to read:

"[NEW MATERIAL] PROHIBITED SALE, PURCHASE OR POSSESSION OF  
FLAVORED TOBACCO PRODUCTS.--

A. It is unlawful to knowingly sell, offer to sell,  
barter or give a flavored tobacco product to a person.

.218181.1

1           B. It is unlawful to purchase, possess or attempt  
2 to purchase or possess any flavored tobacco product."

3           SECTION 3. A new section of the Tobacco Products Act is  
4 enacted to read:

5           "[NEW MATERIAL] PENALTIES.--

6           A. Any person who violates the provisions of  
7 Subsection A or B of Section 2 of this 2021 act is guilty of a  
8 misdemeanor and shall be sentenced pursuant to the provisions  
9 of Section 31-19-1 NMSA 1978. Each violation is a separate and  
10 distinct offense.

11           B. Any minor who violates the provisions of  
12 Subsection B of Section 2 of this 2021 act shall be punished by  
13 a fine not to exceed one hundred dollars (\$100) or forty-eight  
14 hours of community service."

15           SECTION 4. Section 61-37-2 NMSA 1978 (being Laws 2020,  
16 Chapter 46, Section 2) is amended to read:

17           "61-37-2. DEFINITIONS.--As used in the Tobacco Products  
18 Act:

19           A. "characterizing flavor" means a distinguishable  
20 taste or aroma or both, other than the taste or aroma of  
21 tobacco, imparted by a tobacco product or any byproduct  
22 produced by the tobacco product. A tobacco product shall not  
23 be determined to have a characterizing flavor solely because of  
24 the use of additives or flavorings or the provision of  
25 ingredient information;

.218181.1



1           ~~[A.]~~ B. "child-resistant packaging" means packaging  
2 or a container that is designed or constructed to be  
3 significantly difficult for children under five years of age to  
4 open or obtain a toxic or harmful amount of the substance  
5 contained therein within a reasonable time and not difficult  
6 for a normal adult to use properly, but does not mean packaging  
7 or a container that all such children cannot open or obtain a  
8 toxic or harmful amount within a reasonable time;

9           ~~[B.]~~ C. "contraband tobacco products" means any  
10 tobacco products possessed, sold, bartered or given in  
11 violation of the Tobacco Products Act;

12           ~~[C.]~~ D. "delivery sale" means a sale of tobacco  
13 products to a consumer in New Mexico in which:

14                   (1) the consumer submits an order for the sale  
15 by telephone, over the internet or through the mail or another  
16 delivery system; and

17                   (2) the tobacco product is shipped through a  
18 delivery service;

19           ~~[D.]~~ E. "delivery service" means a person,  
20 including the United States postal service, that is engaged in  
21 the delivery of letters, packages or containers;

22           ~~[E.]~~ F. "director" means the director of the  
23 alcoholic beverage control division of the regulation and  
24 licensing department;

25           ~~[F.]~~ G. "distribute" means to purchase and store a

1 product and to offer the product for resale to retailers or  
2 consumers;

3 ~~[G.]~~ H. "distributor" means a person that  
4 distributes tobacco products in New Mexico, but does not  
5 include:

6 (1) a retailer;

7 (2) a manufacturer; or

8 (3) a common or contract carrier;

9 ~~[H.]~~ I. "division" means the alcoholic beverage  
10 control division of the regulation and licensing department;

11 ~~[I.]~~ J. "e-cigarette":

12 (1) means any electronic oral device, whether  
13 composed of a heating element and battery or an electronic  
14 circuit, that provides a vapor of nicotine or any other  
15 substances the use or inhalation of which simulates smoking;  
16 and

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

21 (3) does not include any product regulated as  
22 a drug or device by the United States food and drug  
23 administration under the Federal Food, Drug, and Cosmetic Act,  
24 21 U.S.C. Section 301 et seq.;

25 ~~[J.]~~ K. "electronic nicotine delivery system" means

.218181.1

1 an electronic device, including e-cigarettes, whether composed  
2 of a heating element and battery or an electronic circuit, that  
3 provides a vapor or aerosol of nicotine, the use or inhalation  
4 of which simulates smoking;

5 L. "flavored tobacco product" means any tobacco  
6 product that contains any ingredient, substance, chemical or  
7 compound, other than tobacco, water or reconstituted tobacco  
8 sheet that is added by the manufacturer to a tobacco product  
9 during the processing, manufacture or packing of a tobacco  
10 product, that imparts a characterizing flavor;

11 ~~[K.]~~ M. "knowingly attractive to minors" means  
12 packaging or labeling that contains:

13 (1) a cartoon-like character that mimics  
14 characters primarily aimed at entertaining minors;

15 (2) an imitation or mimicry of trademarks or  
16 trade dress of products that are or have been primarily  
17 marketed toward minors; or

18 (3) a symbol or celebrity image that is  
19 primarily used to market products to minors;

20 ~~[L.]~~ N. "licensee" means a holder of a license  
21 issued by the division pursuant to the Tobacco Products Act;

22 ~~[M.]~~ O. "manufacturer" means a person that  
23 manufactures, fabricates, assembles, processes or labels  
24 tobacco products or imports from outside the United States,  
25 directly or indirectly, a tobacco product for sale or

1 distribution in the United States;

2 [N-] P. "minor" means an individual who is younger  
3 than twenty-one years of age;

4 [O-] Q. "nicotine liquid" means a liquid or other  
5 substance containing nicotine where the liquid or substance is  
6 sold, marketed or intended for use in an electronic nicotine  
7 delivery system;

8 [P-] R. "person" means an individual, corporation,  
9 firm, partnership, copartnership, association or other legal  
10 entity;

11 [Q-] S. "retailer" means a person, whether located  
12 within or outside of New Mexico, that sells tobacco products at  
13 retail to a consumer in New Mexico; provided that the sale is  
14 not for resale;

15 [R-] T. "self-service display" means a display to  
16 which the public has access without the assistance of a  
17 retailer or the retailer's employee; and

18 [S-] U. "tobacco product" means a product made or  
19 derived from tobacco or nicotine that is intended for human  
20 consumption, whether smoked, chewed, absorbed, dissolved,  
21 inhaled, snorted, sniffed or ingested by any other means,  
22 including cigars, cigarettes, chewing tobacco, pipe tobacco,  
23 snuff, e-cigarettes or electronic nicotine delivery systems."

24 SECTION 5. Section 61-37-15 NMSA 1978 (being Laws 2020,  
25 Chapter 46, Section 15) is amended to read:

.218181.1

1 "61-37-15. VENDING MACHINES--RESTRICTIONS ON SALES OF  
2 TOBACCO PRODUCTS.--

3 A. Except as provided in Subsections B and C of  
4 this section, a retailer selling goods at a retail location in  
5 New Mexico shall not use a self-service display for tobacco  
6 products.

7 B. Tobacco products may be sold by vending machines  
8 only:

9 (1) in age-controlled locations where minors  
10 are not permitted; and

11 (2) if the tobacco products are not flavored  
12 tobacco products.

13 C. The sales and display of cigars may be allowed  
14 only:

15 (1) in age-controlled locations where minors  
16 are not permitted; and

17 (2) if the cigars are not flavored tobacco  
18 products."

19 SECTION 6. Section 61-37-17 NMSA 1978 (being Laws 2020,  
20 Chapter 46, Section 17) is amended to read:

21 "61-37-17. SIGNS--POINT OF SALE.--A retailer shall  
22 prominently display in the place where tobacco products are  
23 sold and where a tobacco product vending machine is located a  
24 printed sign or decal that reads as follows:

25 "IT IS ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO

.218181.1

underscored material = new  
[bracketed material] = delete

1 PURCHASE TOBACCO PRODUCTS OR FOR ANY PERSON TO PURCHASE A  
2 FLAVORED TOBACCO PRODUCT."."

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HOUSE BILL  
**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**  
INTRODUCED BY

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO TOBACCO PRODUCTS; CLARIFYING THAT MUNICIPALITIES  
AND COUNTIES MAY ENACT ORDINANCES, CHARTER AMENDMENTS OR  
REGULATIONS PERTAINING TO THE SALES OF TOBACCO PRODUCTS THAT  
ARE STRICTER THAN, BUT NOT IN CONFLICT WITH, THE PROVISIONS OF  
THE TOBACCO PRODUCTS ACT.

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

SECTION 1. Section 61-37-24 NMSA 1978 (being Laws 2020,  
Chapter 46, Section 24) is amended to read:

"61-37-24. PREEMPTION.--When a municipality or county,  
including a home rule municipality or an urban county, adopts  
an ordinance, charter amendment or regulation pertaining to the  
sales of tobacco products, the ordinance, charter amendment or  
regulation shall be consistent with the provisions of the  
Tobacco Products Act. Nothing in this section shall be

1 construed to prohibit a municipality or county from enacting  
2 ordinances, charter amendments or regulations pertaining to the  
3 sales of tobacco products that are stricter than, but not in  
4 conflict with, the provisions of the Tobacco Products Act."

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SENATE BILL

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

FOR THE LEGISLATIVE FINANCE COMMITTEE AND THE TOBACCO  
SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO THE TOBACCO SETTLEMENT PERMANENT FUND; REQUIRING  
THE REMAINING FIFTY PERCENT OF DISTRIBUTIONS TO THE TOBACCO  
SETTLEMENT PERMANENT FUND FOR FISCAL YEAR 2022 TO BE  
DISTRIBUTED TO THE TOBACCO SETTLEMENT PROGRAM FUND.

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

**SECTION 1.** Section 6-4-9 NMSA 1978 (being Laws 1999,  
Chapter 207, Section 1, as amended by Laws 2017, Chapter 2,  
Section 6 and by Laws 2017, Chapter 80, Section 1) is amended  
to read:

"6-4-9. TOBACCO SETTLEMENT PERMANENT FUND--INVESTMENT--  
DISTRIBUTION.--

A. The "tobacco settlement permanent fund" is  
created in the state treasury. The fund shall consist of money  
distributed to the state pursuant to the master settlement

1 agreement entered into between tobacco product manufacturers  
2 and various states, including New Mexico, and executed November  
3 23, 1998 or any money released to the state from a qualified  
4 escrow fund or otherwise paid to the state as authorized by  
5 Section 6-4-13 NMSA 1978, enacted pursuant to the master  
6 settlement agreement or as otherwise authorized by law. Money  
7 in the fund shall be invested by the state investment officer  
8 in accordance with the limitations in Article 12, Section 7 of  
9 the constitution of New Mexico. Income from investment of the  
10 fund shall be credited to the fund. Money in the fund shall  
11 not be expended for any purpose, except as provided in this  
12 section.

13 B. In fiscal year 2007 and in each fiscal year  
14 thereafter, an annual distribution shall be made from the  
15 tobacco settlement permanent fund to the tobacco settlement  
16 program fund of an amount equal to fifty percent of the total  
17 amount of money distributed to the tobacco settlement permanent  
18 fund in that fiscal year until that amount is less than an  
19 amount equal to four and seven-tenths percent of the average of  
20 the year-end market values of the tobacco settlement permanent  
21 fund for the immediately preceding five calendar years.

22 Thereafter, the amount of the annual distribution shall be four  
23 and seven-tenths percent of the average of the year-end market  
24 values of the tobacco settlement permanent fund for the  
25 immediately preceding five calendar years. In the event that

1 the actual amount distributed to the tobacco settlement program  
2 fund in a fiscal year is insufficient to meet appropriations  
3 from that fund for that fiscal year, the secretary of finance  
4 and administration shall proportionately reduce each  
5 appropriation accordingly.

6 C. In addition to the distribution made pursuant to  
7 Subsection B of this section, in fiscal years 2009 through  
8 2013, 2016, ~~[and]~~ 2018 and 2022, the remaining fifty percent of  
9 the total amount of money distributed to the tobacco settlement  
10 permanent fund in that fiscal year shall be distributed from  
11 the tobacco settlement permanent fund to the tobacco settlement  
12 program fund.

13 D. In addition to the distribution made pursuant to  
14 Subsections B and E of this section, in fiscal year 2014,  
15 twenty-five percent of the total amount of money distributed  
16 pursuant to the master settlement agreement to the tobacco  
17 settlement permanent fund in that fiscal year shall be  
18 distributed from the tobacco settlement permanent fund to the  
19 lottery tuition fund.

20 E. In addition to the distribution made pursuant to  
21 Subsections B and D of this section, in fiscal year 2014,  
22 twenty-five percent of the total amount of money distributed to  
23 the tobacco settlement permanent fund in that fiscal year shall  
24 be distributed from the tobacco settlement permanent fund to  
25 the tobacco settlement program fund for appropriation for

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1 direct services provided by early childhood care and education  
2 programs administered by the children, youth and families  
3 department.

4 F. The tobacco settlement permanent fund is a  
5 reserve fund of the state. Money in the tobacco settlement  
6 permanent fund may be expended:

7 (1) in the event that general fund balances,  
8 including all authorized revenues and transfers to the general  
9 fund and balances in the general fund operating reserve, the  
10 appropriation contingency fund and the tax stabilization  
11 reserve, will not meet the level of appropriations authorized  
12 from the general fund for a fiscal year. In that event, in  
13 order to avoid an unconstitutional deficit, the legislature may  
14 authorize a transfer from the tobacco settlement permanent fund  
15 to the general fund but only in an amount necessary to meet  
16 general fund appropriations; or

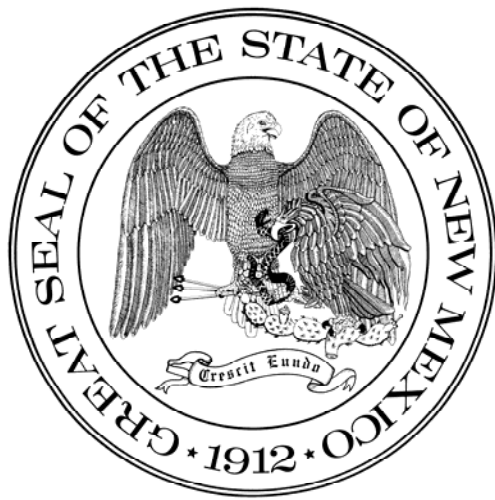
17 (2) as provided in Laws 2016 (2nd S.S.),  
18 Chapter 4, Section 2 and in Laws 2017, Chapter 2, Section 7 [~~of~~  
19 ~~this 2017 act~~]."

**Tobacco Settlement Fund Revenue**  
**FY22**

		FY19	FY20	FY20 Prelim. Actual	FY21 Adjusted	FY22 Request	FY22 LFC Scenario
1	(in thousands of dollars)						
2	<b>Estimated Tobacco Revenues</b>						
3	Beginning Balance Permanent Fund	158,650.6	228,514.0	228,514.0	241,311.5	250,334.2	251,405.5
4	Estimated Tobacco Revenue	34,703.1	35,000.0	33,902.0	32,928.7	31,983.3	12,000.0
5	Appropriation to Program Fund	(17,351.6)	(17,500.0)	(16,951.0)	(32,928.7)	(34,000.0)	(12,000.0)
6	Gains/Losses	12,511.9	14,853.4	(4,153.5)	10,094.0	13,829.6	20,247.9
7	Additional Transfer to Permanent Fund	40,000.0	0.0	0.0	0.0	0.0	0.0
8	Additional Transfer to Program Fund	0.0	0.0	0.0	0.0	0.0	0.0
9	<b>Total Program Fund Appropriations</b>	<b>17,351.6</b>	<b>17,500.0</b>	<b>16,951.0</b>	<b>32,928.7</b>	<b>34,000.0</b>	<b>12,000.0</b>
10	<b>Ending Balance Permanent Fund</b>	<b>228,514.0</b>	<b>260,867.4</b>	<b>241,311.5</b>	<b>251,405.5</b>	<b>262,147.1</b>	<b>271,653.4</b>
11							
12	<b>Tobacco Fund Appropriations</b>						
13	<b>Agency</b>	<b>Purpose</b>					
14	<b>609 Indian Affairs Department</b>	Tobacco Cessation Programs	<b>240.3</b>	<b>249.3</b>	<b>241.5</b>	<b>241.4</b>	<b>249.3</b>
15	630 Human Services Department	Medicaid -- Breast and Cervical Cancer Treatment	1,255.4	1,255.4	1,216.0	1,215.8	860.8
16	630 Human Services Department	Medicaid	6,764.1	6,563.9	6,358.0	5,872.9	4,500.8
17	630 Human Services Department	Medicaid, Contingent on Legislation	0.0	0.0	0.0	16,464.5	0.0
18	<b>Subtotal Human Services Department</b>		<b>8,019.5</b>	<b>7,819.3</b>	<b>7,574.0</b>	<b>23,553.2</b>	<b>24,319.3</b>
19	665 Department of Health	Tobacco Cessation and Prevention	5,239.5	5,435.2	5,264.7	5,264.1	5,435.2
20	665 Department of Health	Diabetes Prevention and Control	689.7	715.5	693.1	693.0	715.5
21	665 Department of Health	Harm Reduction	282.5	293.0	283.8	283.8	293.0
22	665 Department of Health	Breast and Cervical Cancer Screening	124.0	128.6	124.5	124.5	128.6
23	<b>Subtotal Department of Health</b>		<b>6,335.7</b>	<b>6,572.3</b>	<b>6,366.1</b>	<b>6,365.4</b>	<b>6,572.3</b>
24	952 University of New Mexico HSC	Instruction and General Purposes	560.5	581.5	563.2	563.2	581.5
25	952 University of New Mexico HSC	Research in Genomics and Environmental Health	903.6	937.4	908.2	907.9	937.4
26	952 University of New Mexico HSC	Poison Control Center	569.0	590.2	572.0	571.6	590.2
27	952 University of New Mexico HSC	Pediatric Oncology Program	241.0	250.0	242.0	242.0	250.0
28	952 University of New Mexico HSC	Specialty Education in Trauma	241.0	250.0	242.0	242.0	250.0
29	952 University of New Mexico HSC	Specialty Education in Pediatrics	241.0	250.0	242.0	242.0	250.0
30	<b>Subtotal University of New Mexico Health Sciences Center</b>		<b>2,756.1</b>	<b>2,859.1</b>	<b>2,769.4</b>	<b>2,768.7</b>	<b>2,859.1</b>
31	<b>Total Appropriations</b>		<b>17,351.6</b>	<b>17,500.0</b>	<b>16,951.0</b>	<b>32,928.7</b>	<b>12,000.0</b>







LEGISLATIVE COUNCIL SERVICE  
SANTA FE, NEW MEXICO